

United States  
Circuit Court of Appeals

For the Ninth Circuit.

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CARRIE GAUNT, as Executrix of the Estate of  
RUBY M. GAUNT, Deceased,

Appellant,

vs.

VANCE LUMBER COMPANY, a Corporation,  
Appellee.

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Transcript of Record.

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Upon Appeal from the United States District Court for  
the Western District of Washington,  
Northern Division.

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FILED

DEC 8 - 1928

PAUL P. O'BRIEN,  
CLERK



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Circuit Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL.

Messrs. GROSSCUP, MORROW and WALLACE,  
Solicitors for Appellant,  
920 Republic Building, Seattle, Washing-  
ton.

J. O. DAVIES, Esquire, Solicitor for Appellant,  
609 Lowman Building, Seattle, Washing-  
ton.

Messrs. POE, FALKNOR, FALKNOR & EMORY,  
Solicitors for Appellee,  
977 Dexter Horton Building, Seattle,  
Washington.

W. H. ABEL, Esquire, Solicitor for Appellee,  
Montesano, Washington. [1\*]

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In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.

IN EQUITY—No. 596.

RUBY M. GAUNT,

Complainant,

vs.

VANCE LUMBER COMPANY, a Corporation,  
Defendant.

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\*Page-number appearing at the foot of page of original certified Transcript of Record.

## BILL OF COMPLAINT.

To the Honorable the Judges of the District Court of the United States for the Western District of Washington, Northern Division, Sitting in Equity.

Complainant Ruby M. Gaunt, a citizen of Oregon, residing in Portland, brings this, her bill of complaint, against the Vance Lumber Company, a corporation, of Seattle, Washington, and for cause of action complains and alleges:

## I.

That the complainant is now a citizen of the State of Oregon and resides at Portland in said state.

## II.

That the defendant, Vance Lumber Company, at all times herein mentioned was and now is a corporation, duly organized and existing under and by virtue of the laws of the State of Washington, with its principal office and place of business in Seattle, State of Washington, and is a citizen of said state.

## III.

That the amount involved in this bill of complaint exceeds the sum of \$3,000.00, exclusive of interest and costs.

## IV.

That at all of the times herein mentioned the defendant [2] was the owner of certain timber, timber and logged-off lands, sawmill, planing-mill,

shingle-mills, dry kilns, dry lumber-sheds, office and store buildings, stock of merchandise, hotel, about sixty-five cottages, pool-hall and picture-show house, a railroad, and railroad and logging equipment in Grays Harbor and Thurston Counties in the State of Washington, at and near the town of Malone; all the said property, both real, personal and mixed, was owned and used by the defendant in the conduct of its logging, lumbering and lumber manufacturing business at said place. The said timber, timber and logged-off lands, railroad and personal property being more particularly described as follows, to wit:

The Northeast Quarter (NE. $\frac{1}{4}$ ) of Section Two (2); The East one-half (E. $\frac{1}{2}$ ) and the Southeast Quarter (SE. $\frac{1}{4}$ ) of the Northwest Quarter (NW. $\frac{1}{4}$ ), and the Northeast Quarter (NE. $\frac{1}{4}$ ) of the Southwest Quarter (SW. $\frac{1}{4}$ ), Lots Five (5) and Six (6) all in Section Six (6); Section Eight (8); all in Township Seventeen (17) North, Range Four (4) West, W. M.

Lots One (1) and Two (2) of Section Two (2); Lots One (1), Two (2), Three (3) and Four (4) of Section Four (4), except a strip at the Southeast (SE.) corner of Lot One (1), described as follows: Beginning at the Southeast (SE.) corner of Lot One (1), thence North (N) forty (40) rods, thence West (W) eight (8) rods, thence South (S) forty (40) rods, thence East (E) eight (8) rods to place of beginning. The Southeast Quarter (SE. $\frac{1}{4}$ ) of Section Nine (9); The South one-

half (S.1/2) of Section Ten (10), excepting and reserving the following tracts of land:

Beginning at a point on the south line of Section 10, which point is 30 feet easterly from the section corner common to Sections 9, 10, 15 and 16, T. 17 N., R. 5 West, W. M.; thence north a distance of 302.8 feet; thence No. 55° 33' E. a distance of 450 feet; thence S. 34° 27' East, a distance of 499 feet to a point which is 50 feet at right angles to the center line of the Vance Lumber Co.'s railroad track; thence S. 75° 50' West parallel to and 50 feet distant from the center line of aforesaid tract to the South line of Section 10; thence westerly along said section line 141 feet to place of beginning. Which tract #1 contains 4.98 acres, more or less.

Beginning at a point on the south line of Section 10, which point is 30 feet easterly from the section corner common to the sections 9, 10, 15 and 16, T. 17 N., R. 5 W., W. M.; thence north a distance of 302.8 feet; thence N. [3] 55° 33' E. a distance of 450 feet which point is the point of beginning of tract No. 2; thence N. 55° 33' E. a distance of 400 feet; thence South (S.) 34° 27' East (E.) a distance of 635 feet to a point which is 50 feet at right angles from the center line of the Vance Lumber Co.'s railroad track; thence southwesterly along a line which is parallel to and 50 feet distant from the aforesaid tract to the northerly line of tract No. 1; thence N. 34° 27' West along northerly line of tract No. 1 a distance of 499 feet to place of begin-

ning. Which tract No. 2 contains 5.20 acres, more or less.

Beginning at a point on the south line of Section 10, which point is 30 feet easterly from the section corner common to sections 9, 10, 15 and 16, T. 17 N., R. 5 W., W. M.; thence north a distance of 302.8 feet; thence north  $55^{\circ} 33'$  E. a distance of 850 feet to a point which is the point of beginning of Tract No. 3; thence N.  $55^{\circ} 33'$  E. a distance of 350 feet; thence S.  $34^{\circ} 27'$  E. a distance of 578 feet to a point which is 50 feet from and at right angles to the center line of the Vance Lumber Company's railroad track; thence on a curve to the right, having a radius of 523.14 feet and parallel to the center line of aforesaid tract to the northerly line of Tract No. 2 of garden tracts; thence North  $34^{\circ} 27'$  West along northerly line of Tract No. 2 a distance of 636 feet to place of beginning. Which tract contains 5.05 acres, more or less.

Beginning at a point on the south line of Section 10, which point is 30 feet easterly from the section corner common to sections 9, 10, 15 and 16 in T. 17 N., R. 5 W., W. M.; thence North 302.8 feet; thence North  $55^{\circ} 33'$  East a distance of 1200 feet to a point which is the point of beginning of tract No. 4; thence N.  $55^{\circ} 33'$  E. a distance of 218 feet; thence North  $2^{\circ} 08'$  E. a distance of 342 feet; thence S.  $28^{\circ} 39' 5''$  to the beginning of a curve having a radius of 397.68 feet; thence on a curve to the right, having a radius of 397.68 feet for a distance of 277 feet to a tangent; thence at right angles to said tangent on a bearing of S.  $78^{\circ} 44'$  E.

for a distance of 30 feet; thence S. 11 14' W. parallel to and 50 feet from the center line of the Vance Lumber Co.'s railroad track, for a distance of 216.5 feet; thence on a curve to the right with a radius of 666.34 feet to the northerly line of Tract No. 3; thence N. 34° 27' W. along northerly line of tract No. 3 a distance of 578 feet to place of beginning. Which tract contains 4.14 acres, more or less.

The Northeast Quarter (NE. $\frac{1}{4}$ ) of Section Ten (10); Section Eleven (11); The North one-half (N. $\frac{1}{2}$ ) and the Southeast Quarter (SE. $\frac{1}{4}$ ) of Section Twelve (12); The West one-half (W. $\frac{1}{2}$ ) of the Southeast Quarter (SE. $\frac{1}{4}$ ) of Section Fifteen (15); The West one-half (W. $\frac{1}{2}$ ) of the Southeast Quarter (SE. $\frac{1}{4}$ ); The North one-half (N. $\frac{1}{2}$ ) of the Northwest Quarter (NW. $\frac{1}{4}$ ) of (NW. $\frac{1}{4}$ ) and the South one-half (S. $\frac{1}{2}$ ) of the Southwest Quarter (SW. $\frac{1}{4}$ ) of Northwest Quarter (NW. $\frac{1}{4}$ ), less county road right of way; the Southeast Quarter (SE. $\frac{1}{4}$ ) of the Southeast Quarter (SE. $\frac{1}{4}$ ), the Northwest Quarter (NW. $\frac{1}{4}$ ) of the Southwest Quarter (SW. $\frac{1}{4}$ ), excepting a strip of land two hundred (200) feet square in the Southwest (SW.) corner; excepting also [4] the old Mox-Chehalis county road and the new Mox-Chehalis county road and that portion deeded by the defendant to School District Number Five. The Southwest Quarter (SW. $\frac{1}{4}$ ) of the Southwest Quarter (SW. $\frac{1}{4}$ ), excepting the right of way of the Northern Pacific Railroad Company and the county road; excepting also tract of land South (S.) and West (W.) of said railroad right of way, known as Tax

Number Six (6); The Southeast Quarter (SE. $\frac{1}{4}$ ) of the Southwest Quarter (SW. $\frac{1}{4}$ ) and the Northeast Quarter (NE. $\frac{1}{4}$ ) of Southwest Quarter (SW. $\frac{1}{4}$ ), excepting that part thereof deeded by the defendant to School District Number One Hundred Five, excepting also the new Mox-Chehalis county road. That part of the Southwest Quarter (SW. $\frac{1}{4}$ ) of the Northeast Quarter (NE. $\frac{1}{4}$ ) lying South (S.) and East (E.) of the Mox-Chehalis County Road; also a strip of land sixty (60) feet wide across the Southeast Quarter (SE. $\frac{1}{4}$ ) of the Northeast Quarter (NE. $\frac{1}{4}$ ), same being thirty (30) feet wide on each side of the railroad of the defendant as now laid out, of Section Sixteen (16); The South one-half (S. $\frac{1}{2}$ ) of the Southeast Quarter (SW. $\frac{1}{4}$ ) of Southeast Quarter (SE. $\frac{1}{4}$ ) with easement of passage over Daniel McKay private road, which roadway is twelve (12) feet wide and extends across the North one-half (N. $\frac{1}{4}$ ) of SW. $\frac{1}{4}$  of Southeast Quarter (SE. $\frac{1}{4}$ ) and N. $\frac{1}{2}$  of SE. $\frac{1}{4}$ ; that portion of the Northeast Quarter (NE. $\frac{1}{4}$ ) of the Southeast Quarter (SE. $\frac{1}{4}$ ) lying North (N.) and East (E.) of the Northern Pacific Railway right of way, less county roads; also excepting Tax Number One (1) being a strip of land lying South (S.) of county road to mill; excepting also tract of land described as follows: Beginning at the South (S.) line of the Southeast Quarter (SE. $\frac{1}{4}$ ) of the Northeast Quarter (NE. $\frac{1}{4}$ ) of Section Seventeen (17) T. Seventeen (17) North, Range 5 West, W. M., North (N.) and East (E.) of County Road, thence Southeasterly 43° 48' East



along County Road 219 feet; thence North (N.) 80 32' East 258.6 feet; thence North 29° 20 East 165 feet to the South line of said forty (40) acre tract, all in Section Seventeen (17).

The Southwest Quarter (SW. $\frac{1}{4}$ ) of the Northeast Quarter (NE. $\frac{1}{4}$ ), the Northwest Quarter (NW. $\frac{1}{4}$ ) of the Southeast Quarter (SE. $\frac{1}{4}$ ), that part of Lot Five (5) lying North (N.) and East (E.) of county road all in Section Twenty-one (21); the North one-half (N. $\frac{1}{2}$ ) of the Northwest Quarter (NW. $\frac{1}{4}$ ), the Southwest Quarter (SW. $\frac{1}{4}$ ) of the Northwest Quarter (NW. $\frac{1}{4}$ ), and the Northwest Quarter (NW. $\frac{1}{4}$ ) of the Southwest Quarter (SW. $\frac{1}{4}$ ), Section Twenty-two ((22), all in Township Seventeen (17) North, Range 5 West, W. M.

The West one-half (W. $\frac{1}{2}$ ) of the Southwest Quarter (SW. $\frac{1}{4}$ ); The Northeast Quarter (NE. $\frac{1}{4}$ ) and the North one-half (N. $\frac{1}{2}$ ) of the Southeast Quarter (SE. $\frac{1}{4}$ ) of Section Twenty (20); The West one-half (W. $\frac{1}{2}$ ) of Section Twenty-two (22); The Southeast Quarter (SE. $\frac{1}{4}$ ) of Section Twenty-six (26); The Northeast Quarter (NE. $\frac{1}{4}$ ) of Section Twenty-eight (28); Sections Twenty-nine, Thirty (30), Thirty-one (31) and Thirty-two (32); The Southwest Quarter (SW. $\frac{1}{4}$ ) and the South one-half (S. $\frac{1}{2}$ ) of the Northwest Quarter (NW. $\frac{1}{4}$ ) and the Northeast Quarter (NE. $\frac{1}{4}$ ) of the Northwest Quarter (NW. $\frac{1}{4}$ ) and the Northwest Quarter (NW. $\frac{1}{4}$ ) of the Northeast Quarter (NE. $\frac{1}{4}$ ), Section Thirty- [5] *Section Thirty-four* (34), all in Township Eighteen (18) North, Range 4 West, W. M.



Section Twenty-five (25); the East Forty (40) rods of the Northeast Quarter (NE. $\frac{1}{4}$ ) of the Northeast Quarter (NE. $\frac{1}{4}$ ) of Section Twenty-six (26); the Southeast Quarter (SE. $\frac{1}{4}$ ) of Section Thirty-two (32); the Southwest Quarter (SW. $\frac{1}{4}$ ) and the Northeast Quarter (NE. $\frac{1}{4}$ ) of the Southeast Quarter (SE. $\frac{1}{4}$ ) of Section Thirty-four (34); the North one-half (N. $\frac{1}{2}$ ) and the Southeast Quarter (SE. $\frac{1}{4}$ ) and the North one-half (N. $\frac{1}{2}$ ) of the Southwest Quarter (SW. $\frac{1}{4}$ ) of Section Thirty-five (35); Section Thirty-six (36), all in Township Eighteen North, Range 5, West W. M.

Also a railroad described as follows:

The logging railroad of the vendor, commencing at its junction with the Northern Pacific Railway at Malone, in Section Seventeen, Township Seventeen North, Range Five West, W. M., thence across Section Sixteen, Section Fifteen, Section Ten, Section Three, Section Two, and Section One, all in said township; thence across Section Thirty-six in Township Eighteen North, Range Five West, W. M., thence across Section Thirty-one and Section Thirty in Township Eighteen North, Range Four West, W. M., including therein all easements for grade and roadbed; also the rails, bridges, anglebars, switch materials, frogs, and all spurs, sidings and branches, said railroad in part extending across the lands agreed to be conveyed as above described, and also including the following:

Beginning at the point which is the section corner common to Sections Nine, Ten, Fifteen and Sixteen in Township Seventeen North, Range Five

West, W. M., and thence South along the West line of Section Fifteen for a distance of Three Hundred and Fourteen and Nine-tenths feet; thence North Thirty-four degrees Thirty-one minutes for a distance of Thirty-three and Seven-tenths feet, thence on a curve to the right, said curve having a radius of Six Hundred and Eighty-six and Three-tenths feet, for a distance of Four Hundred and Ninety-two and Six-tenths feet; thence on the tangent of said curve which bears North Seventy-five degrees Forty-seven minutes East, for a distance of One Hundred Sixty-nine and Eight-tenths feet to a point on the North line of Section fifteen; thence South Eighty-seven degrees Four minutes West along the North line of Section Fifteen for a distance of Five Hundred and Eighty and Six-tenths feet to place of beginning; also including the tract of land commencing at a point on the section line One Hundred and Six feet West of the Northeast corner of Section Sixteen, Township Seventeen North, Range Five West, W. M.; thence West along the North line of said Section to a point One Hundred and Sixty-four feet from the point of beginning; thence Southeasterly Eighteen degrees South ten degrees East to a point Three Hundred and Sixty-one feet from Section line at point of intersection with said railroad right of way; thence Northeasterly [6] along said right of way Three Hundred and Forty feet to point of beginning; also beginning at the Northeast corner of Section Sixteen, Township Seventeen North, Range Five West, W. M., thence

South on Section line between Sections Fifteen and Sixteen, variation Twenty-five degrees Thirty minutes East Six Hundred and Sixty-six and Two-tenths feet; thence West One Hundred and Ninety-five feet to intersection of the East line of said railroad; thence Northwesterly on said railroad right of way line to its intersection of the North line of said Section sixteen, thence East Forty-five and Two-tenths feet to the place of beginning; also a strip of land for railway right of way Sixty feet wide across the North Thirty acres of Northeast Quarter of Northeast Quarter of said Section Sixteen, the same being thirty feet on each side of said railroad as laid out (subject to leasehold agreement contained in vendor's title deed); also a strip of land Sixty feet wide across the South ten acres of the Northeast Quarter of Northeast Quarter of said Section Sixteen, Township Seventeen North, Range Five West, W. M., the same being Thirty feet on each side of said railroad as laid out.

Also the following described personal property:

Also all buildings and fixtures upon the said lands, and also the following described personal property: Sawmill building, power plant, machine-shop, machinery, supplies, shingle-mills and all machinery therein, shingle-mill, dry kilns, planing-mill and machinery and dry kilns, hotel and equipment, store and office building, stock of merchandise and office equipment, pool-hall and picture-show house and equipment; sixteen logging engines with all lines, blocks, and equipment; two steam shovels, one 63-ton Heisler geared loco-

tive, one 50-ton Heisler geared locomotive, one Baldwin locomotive, class 12-30 $\frac{1}{4}$  E-88 No. 55804, all logging trucks, about forty-one in number, three wood racks, eight flat cars, six gravel cars, one steel moving car, three oil-tank cars, camp cars and equipment, all rails and supplies therewith, stock of lumber on hand on January 1, 1924; all logs in pond and in woods and all other personal property owned and used by the vendor at Malone, Washington, in its logging and lumbering operations, excepting and reserving, however, its books of entry and account, its office files, accounts receivable and bills receivable and all lumber and logs shipped or billed prior to January 1, 1924.

#### V.

That for a long time prior to the fifth day of July, 1923, this complainant and the defendant had been negotiating for the sale of defendant's property as hereinbefore described, and it was the intention of the defendant to employ complainant [7] to find a purchaser, and it was the intention of the complainant to find a purchaser for all the property belonging to the defendant as hereinbefore set forth and described, and it was the intention of the defendant to pay as compensation for the sale of said property or the finding of a purchaser therefor a commission of two per cent upon the sale price of said property.

That it was understood and agreed by and between said parties that the defendant would give to the complainant a contract authorizing her to find a purchaser for said property, provide for

a commission for finding a purchaser for said property and would describe defendant's said property in said contract. That for the purpose of consummating said agreement, intention and understanding the defendant did, on the fifth day of July, 1923, make, sign and deliver to the complainant a memorandum in writing authorizing the complainant to procure a purchaser for its said property, providing therein for a commission of two per cent of the sale price of said property, and describing a part of said property. That the defendant knew the description of its said property. That the complainant did not know the description of defendant's property. That at the time the defendant delivered said memorandum of agreement to this complainant it represented to her that the said memorandum contained a description of all its said property then owned by it in Grays Harbor and Thurston Counties, in connection with its said logging and lumbering operations.

That this complainant believed and relied upon the representation of the defendant so made to her and acted thereon and procured the Mason County Logging Company, to buy, and [8] the Mason County Logging Company did buy all of defendant's said property. That the defendant well knew that said memorandum of agreement did not describe all of its said property and did not contain a description of all the property which it had offered for sale and agreed to sell, or which she and the said defendant had understood and

agreed was to be sold and described in said memorandum of agreement.

This complaint alleges that the representation of the defendant so made to her, that said memorandum contained a description of all its property was not true and was made either with the intention on the part of the defendant to mislead and deceive this complainant, or if said misrepresentation was not intentional it was by mistake resulting in depriving complainant of her commission for procuring the Mason County Logging Company to buy said property. That this complainant did not know that said representations were not true and did not in fact know that a part of said property had been omitted from their memorandum of agreement until after said property had been sold.

That if the failure of the defendant to describe all its said property in said memorandum of agreement in accordance with their previous understanding and intention was not intentional, then it was due to the mutual mistake of the defendant and this complainant in that the defendant at the time it drafted said memorandum of agreement did by mere accident, inadvertance and mistake leave out and omit from said memorandum of agreement that portion of its said property described in paragraph IV contained in Sections 26, 32 and 34, Township 18 North, Range 5 West, W. M., and Sections 2, 4, 9, 10, 16, 17 and the West one-half of the Northwest Quarter of Section 11, [9] Township 17 North, Range 5 West, W. M. And that this omission from said memorandum of agree-



ment was not known to complainant or discovered by her until after the sale of said property to the Mason County Logging Company, the purchaser procured by the complainant. And that her failure to discover or ascertain the fact that said property had been omitted from said memorandum of agreement was due entirely to her inadvertance, accident and mistake.

#### VI.

That there is now justly due and owing the complainant from the defendant under said contract of employment the sum of \$50,000.00, together with interest thereon at the rate of six per cent (6%) per annum from January 9th, 1924. That by reason of said mutual mistake and inadvertance of the parties, or the mistake and inadvertance of the complainant and the fraud of the defendant as aforesaid, the complainant cannot enforce said contract of employment and recover the full amount of her commission now due and owing her in an action at law. That the complainant has no plain, speedy or adequate remedy at law.

WHEREFORE, complainant prays:

#### I.

For a decree of this Court reforming said written contract of employment of July fifth, 1923, by including therein a description of the property omitted, particularly the property described in Paragraph V of this bill of complaint.

#### II.

For a decree of this Court enforcing said con-

tract of employment as and when reformed according to the principles [10] applicable, by granting a money judgment in favor of the complainant and against the defendant for the sum of \$50,000, with interest thereon at the rate of six per cent (6%) per annum from January ninth, 1924, to date of judgment, together with costs of suit.

CHAS. A. WALLACE,

J. O. DAVIES,

Solicitors for Complainant.

GROSSCUP, MORROW & WALLACE,

Of Counsel.

Office and P. O. Address: 2600 L. C. Smith Building, Seattle, Washington.

[Endorsed]: Filed Aug. 30, 1927. [11]

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[Title of Court and Cause.]

### ANSWER TO BILL OF COMPLAINT.

Now comes the Vance Lumber Company, a corporation, defendant in the above-entitled action, and answering the bill of complaint of the complainant says:

#### I.

That whether the complainant is now a citizen of Oregon and resides at Portland in said state, this defendant has not sufficient information upon which to base a belief, and therefore denies the same.

#### II.

The defendant, Vance Lumber Company, admits



that at all times herein mentioned it was and now is a corporation duly organized and existing under and by virtue of the laws of the State of Washington, with its principal office and place of business in Seattle, State of Washington, and is a citizen of said state.

### III.

The defendant denies that the amount involved in this case exceeds the sum of Three Thousand (\$3,000.00) Dollars, exclusive of interest and costs, or that there is any sum involved in this action.

### IV.

This defendant admits that on the 5th day of July, 1923, and at all times thereafter up to and including the 9th day of January, 1924, it was the owner of certain timber, timber and logged-off lands, sawmill, planing-mill, shingle-mills, dry kilne, dry lumber-sheds, office and store buildings, stock of merchandise, [12] hotel, about sixty-five cottages, pool-hall and picture-show house, logging equipment, and about fourteen miles of standard gauge railroad in Grays Harbor and Thurston Counties, in the State of Washington, at or near the town of Malone; that said property, both real, personal and mixed was owned and used by the defendant in the conduct of its logging, lumbering and lumber manufacturing business at said place; that it owned the following described lands situated in Grays Harbor and Thurston Counties, State of Washington.

NE.1/4 of .....	Section 2)	
E.1/2, & N.1/2 of SW.1/4, S.1/2 of NW.1/4 .....	Section 6)	Twp. 17 North,
All of .....	Section 8)	Range 4 West.
E.1/2, NW.1/4 of .....	Section 12)	
S.1/2, NE.1/4, E.1/2 of NW.1/4 .....	Section 11)	
W.1/2 of SE.1/4 .....	Section 15)	Twp. 17 North,
W.1/2 of SW.1/4, W.1/2 of NW.1/4, NE.1/4 of NW.1/4 .....	Section 22)	Range 5 West.
SW.1/4 of NE.1/4, NE.1/4 of SE.1/4 .....	Section 21)	
NE.1/4 of NE.1/4 .....	Section 28)	
NE.1/4, N.1/2 of SE.1/4, W.1/2 of SW.1/4 .....	Section 20)	
W.1/2 .....	Section 22)	
SE.1/4 .....	Section 26)	Twp. 18 North,
NE.1/4 .....	Section 28)	Range 4 West.
All of Sections 29-30-31-32	)	
NW.1/4 of NE.1/4, E.1/2 of NW.1/4, SW.1/4 of NW.1/4,		
SW.1/4 .....	Section 34)	
All of Sections 25-36.	)	Twp. 18 North,
N.1/2, SE.1/4, N.1/2 of SW.1/4 .....	Section 35)	Range 5 West.

That it also owned land in Sections 10, 16, 17, Township 17 North, Range 5 West, where the mill, office buildings, hotel, cottages and other buildings in the town of Malone, Washington, is situated; that owing to the defective description, it has not sufficient information as to whether the lands described in paragraph IV of complainant's bill of complaint other than what is admitted herein, at said time belonged to this defendant, and therefore denies the same.

## V.

This defendant denies that for a long time prior to the 5th day of July, 1923, or any other time, the complainant and the defendant had been negotiating for the sale of defendant's property, and denies that it was the intention of the defendant to employ [13] complainant to find a purchaser, and denies that it was the intention of complainant to find a purchaser for all of the property belonging to the defendant as described in the bill of complaint, and denies that it was the intention of the defendant to pay as compensation for the sale of said property, or the finding of a purchaser therefor a two per cent commission of the sale price of said property.

This defendant denies that it was understood and agreed by and between the said parties that the defendant would give to the complainant a contract authorizing her to find a purchaser for said property, and denies that it would provide for a commission for finding a purchaser for said property, and denies that it would describe defendant's

said property in said contract. This defendant denies that for the purpose of consummating said agreement the defendant on the 5th day of July, 1923, or at any other time, made, signed and delivered to the complainant a memorandum in writing authorizing the complainant to procure a purchaser for its said property, and providing therein for a commission of two per cent of the sale price of said property, and describing a part of said property. Admits that the defendant knew the description of its said property. Denies that the complainant did not know the description of defendant's property. This defendant denies that it ever delivered a memorandum of agreement to the complainant, or represented to her that said memorandum contained a description of its said property then owned by it in Grays Harbor and Thurston Counties in connection with its said logging and lumbering operations.

This defendant denies that it made any representations to the complainant, or that the complainant relied thereon. This defendant denies that the complainant procured the Mason County Logging Company to buy the defendant's said property. The defendant alleges the truth to be that the said property so sold to the [14] ~~complainant to find a purchaser, and denies that it was the intention of complainant to find a purchaser for all of the property belonging to the defendant as described in the bill of complaint, and denies that it was the intention of the defendant to pay as compensation for the sale of said prop-~~

~~erty, or the finding of a purchaser therefor a two per cent commission of the sale price of said property.~~

This defendant denies that it was understood and agreed by and between the said parties that the defendant would give to the complainant a contract authorizing her to find a purchaser for said property, and denies that it would provide for a commission for finding a purchaser for said property, and denies it would describe defendant's said property in said contract. This defendant denies that for the purpose of consummating said agreement the defendant on the 5th day of July, 1923, or at any other time, made, signed and delivered to the complainant a memorandum in writing authorizing the complainant to procure a purchaser for its said property, and providing therein for a commission of two per cent of the sale price of said property, and describing a part of said property. Admits that the defendant knew the description of its said property. Denies that the complainant did not know the description of defendant's property. This defendant denies that it ever delivered a memorandum of agreement to the complainant, or represented to her that said memorandum contained a description of its said property then owned by it in Grays Harbor and Thurston Counties in connection with its said logging and lumbering operations.

This defendant denies that it made any representations to the complainant, or that the complainant ~~relied thereon. This defendant denies that the~~

~~complainant procured the Mason County Logging Company to buy the defendant's said property. The defendant alleges the truth to be that the said property so sold to the~~ [15] Mason County Logging Company was by and through other agents and agencies, and that the complainant had nothing whatever to do with the sale of said property to the Mason County Logging Company, and this defendant denies that it ever furnished any memorandum of agreement describing all of the real property *woned* by the defendant, or intended to describe all of the real property owned by the defendant, and denies that any memorandum ever furnished to the complainant was untrue, or concerning which there was any misrepresentation, and denies that there was any mistake in any communication or memorandum ever furnished by this defendant to the complainant, and denies that the complainant procured the sale of said property to the Mason County Logging Company, and denies that the complainant was misled in anywise as to any memorandum received from this defendant in connection with its property.

This defendant denies there was any mutual mistake between the defendant and the complainant in connection with the description of its said property, and denies that there was any accident, inadvertence or mistake in leaving out and *and* omitting from said memorandum that portion of its property described in paragraph IV of the bill of complaint contained in Sections 26, 32 and 34, Township 18 North, Range 5 West, WM., and Sections 2, 4, 9,



10, 16, 17 and W. $\frac{1}{2}$  NW. $\frac{1}{4}$  of Section 11, Township 17 North, Range 5 West, WM., and denies that there was any omission unknown to the complainant, or discovered by her until after the sale of said property to the Mason County Logging Company. Denies that the complainant procured said purchaser or had anything to do with the sale of said property to the Mason County Logging Company. Denies that the failure of the complainant to discover or ascertain the fact that the said property had been omitted from any memorandum was due entirely to her inadvertence, accident and mistake. [16]

## VI.

Denies that there is now justly due and owing to the complainant from the defendant the sum of Fifty Thousand (\$50,000.00) Dollars, or any other sum whatsoever. Denies that the complainant has any contract of employment, and denies that the complainant has been deprived, by reason of any mutual mistake or inadvertence, or mistake or inadvertence of the complainant, or on account of any fraud of the defendant, from being able to enforce said contract, and alleges the truth to be that the complainant has no contract with the defendant, and that any alleged contract which the complainant claims to have is void, because of the statute of frauds of the State of Washington providing that all agreements shall be void authorizing or employing an agent to sell real estate for compensation or a commission unless such agreement is in writing

signed by the party to be charged therewith and describing the subject matter of the contract.

#### VII.

And this defendant, in addition to the foregoing answer, avers that by a certain statute, being Section 5825 of Remington's Compiled Statutes of Washington, 1923, in force and effect at all times herein mentioned, commonly called the statute of frauds, all agreements, contracts and promises authorizing and employing an agent or broker to sell or purchase real estate for compensation or a commission shall be void unless such agreement, contract or promise, or some note or memorandum thereof be in writing and signed by the party to be charged therewith or by some person thereunto by him lawfully authorized. That the said alleged agreement set up in said complainant's bill of complaint, and therein alleged to have been made and entered into by the defendant and the complainant was not in writing and executed pursuant to the said statute, and therefore this defendant insists that the same is void as against this defendant, and that it cannot be affected thereby, and this [17] defendant, for the reasons and under the circumstances aforesaid is advised and insists that this complainant is not entitled to any relief touching the said matters complained of in her bill of complaint.

#### VIII.

And this defendant for a still further answer to said bill of complaint avers that heretofore in the Superior Court of the State of Washington, in and



for King County, in cause No. 182,091, entitled "R. M. Gaunt, Plaintiff, vs. Vance Lumber Company, a Corporation, Defendant," this complainant instituted an action to recover a commission of two per cent upon a complaint, a copy of which is hereto attached, marked Exhibit "A" and made a part of this answer; that thereafter the defendant filed an answer in said cause, a copy of which is hereto attached, marked Exhibit "B" and made a part of this answer, and that subsequently thereto, on or about the 18th day of December, 1925, said action came on for trial before a court and jury, and thereafter such proceedings were had therein that the Court entered a judgment in said cause dismissing said action, a copy of which judgment is hereto attached, marked Exhibit "C" and made a part of this answer; that the said contract of employment referred to in said judgment is the identical contract of employment which the complainant is attempting to set up in her bill of complaint herein, and is the identical contract of employment which the Court therein declared insufficient; that said judgment in said cause No. 182,091, at all times since its entry on the 22d day of December, 1925, has been and now is in full force and effect and that all of the matters and things alleged and set up in complainant's bill of complaint had been adjudicated and determined adversely to the complainant in a court of competent jurisdiction, and the defendant, for the reasons aforesaid and under the circumstances aforesaid, is advised and insists that the complainant is not entitled to any relief

in this court against the defendant touching the matters complained of in her said bill of complaint. [18]

## IX.

And this defendant in addition to the foregoing answer again and still further avers that the complainant has been fully aware at all times from and after the 5th day of July, 1923, of all the facts and circumstances concerning and entering into her alleged contract of employment and of the insufficiency thereof, and this complainant has been guilty of laches in seeking any equitable relief looking to the reformation of said alleged contract of employment, and the complainant has not pursued reasonable diligence if she had any rights to have said alleged contract reformed, in seeking such equitable relief, and the defendant for the reasons aforesaid and under said circumstances is advised and insists that said complainant is not entitled to any relief against the defendant touching the matters complained of in said bill of complaint.

WHEREFORE, defendant prays that this action may be dismissed and that the defendant may go hence without day, and that it recover its costs and disbursements herein.

W. H. ABEL,  
POE, FALKNOR, FALKNOR & EMORY,  
Solicitors for Defendant.

Due service of the within answer, together with the receipt of a true copy thereof, is hereby admitted this 13th day of October, 1927.

GROSSCUP, MORROW & WALLACE,  
Solicitors for Complainant. [19]

EXHIBIT "A."

In the Superior Court of the State of Washington  
in and for the County of King.

No. 182,091.

R. M. GAUNT,

Plaintiff,

vs.

VANCE LUMBER COMPANY, a Corporation,  
Defendant.

COMPLAINT.

Plaintiff complains and for cause of action  
against the defendant, alleges:

I.

That the defendant at all times herein mentioned  
was and now is a corporation duly organized and  
existing under and by virtue of the laws of the  
State of Washington with an office and place of  
business in Seattle, King County, State of Wash-  
ington.

II.

That at all the times herein mentioned the de-  
fendant was the owner of the following described  
real estate and timber lands, lying, being and situ-  
ate in the State of Washington, to wit:

Sections 25, 35 and 36, Township 18 North,  
Range 5 West, W. M.,

Sections 29, 30, 31 and 32; the N. $\frac{3}{4}$  of  
the E. $\frac{1}{2}$ , the W. $\frac{1}{2}$  of the SW. $\frac{1}{4}$  of Section

20; the W. $\frac{1}{2}$  of Section 22; the NE. $\frac{1}{4}$  of Section 28; the SE. $\frac{1}{4}$  of Section 26; the SW. $\frac{1}{4}$  and the SW. $\frac{1}{2}$  of the NW. $\frac{1}{4}$ ; the NE. $\frac{1}{4}$  of the NW. $\frac{1}{4}$ ; the NW. $\frac{1}{4}$  of the NE. $\frac{1}{4}$ , of Section 34, Township 18 North, Range 4 West, W. M.,

Section 8: the NE. $\frac{1}{4}$  of Section 2, and the E. $\frac{1}{2}$  and the N. $\frac{1}{2}$  of the SW. $\frac{1}{4}$ ; the S. $\frac{1}{2}$  of the NW. $\frac{1}{4}$  of Section 6; Township 17 North, Range 4 West, W. M., [20]

Section 11 and the E. $\frac{1}{2}$  and the NW. $\frac{1}{4}$  of Section 12; the SW. $\frac{1}{4}$  of the SW. $\frac{1}{4}$  of Section 15; the E. $\frac{1}{2}$  of the E. $\frac{1}{2}$  of Section 22; the SW. $\frac{1}{4}$  of the NE. $\frac{1}{4}$  and the NW. $\frac{1}{4}$  of the SE. $\frac{1}{4}$  of Section 21, Township 17 North, Range 5 West, W. M.,

together with the sawmill, railroad, railroad equipment, and all tools and appliances and personal property on said property and used in connection with the operation of the said sawmill in the cutting and manufacture of lumber.

### III.

That on or about July 5th, 1923, the said defendant was desirous of selling said real estate and personal property, and entered into a contract in writing with the plaintiff wherein and whereby the defendant employed the plaintiff to secure for the defendant a purchaser for said property and the defendant did agree to sell said property to any purchaser that the plaintiff could find willing to purchase said property for the sum of \$3,250,000.00 and to pay the plaintiff a commission of 2% on the said sale price of said property. That there-

after and, to wit, on or about the 7th day of August, 1923, the plaintiff did find and procure a purchaser for said property, to wit, Mason County Logging Company, a corporation, and the said Mason County Logging Company did purchase the property of and from the defendant for the said sum of \$3,250,000.00.

That the plaintiff has performed all the conditions of said contract on her part to be performed. That defendant has wholly neglected and refused to pay the plaintiff her said commission on the sale of said property or any part thereof. That there is now justly due and owing the plaintiff from the defendant, the sum of \$65,000.00, with interest thereon at the rate of 6% per annum from the said date of sale. [21]

WHEREFORE, plaintiff demands judgment against the defendant in the sum of \$65,000.00, with interest thereon at the rate of 6% per annum from the 7th day of August, 1923, until judgment, together with costs of suit.

CHAS. A. WALLACE,

Attorney for Plaintiff.

Office and Postoffice Address: 26th Floor L. C.  
Smith Bldg., Seattle, Washington.

State of Washington,  
County of King,—ss.

R. M. Gaunt, being first duly sworn, on oath deposes and says that she is the plaintiff named in the above-entitled action, that she has read the foregoing complaint, knows the contents thereof, and

that the matters and things therein set forth are true as she verily believes.

R. M. GAUNT.

Subscribed and sworn to before me this 30th day of April, nineteen hundred and twenty-five.

CHAS. A. WALLACE,

Notary Public in and for the State of Washington,  
Residing at Tacoma. [22]

EXHIBIT "B."

In the Superior Court of Washington in and for  
King County.

No. 182,091.

R. M. GAUNT,

Plaintiff,

vs.

VANCE LUMBER COMPANY, a Corporation,  
Defendant.

ANSWER.

The defendant specially relying upon its demurrer unto the complaint, and not waiving the same, makes answer unto said complaint as follows:

I.

Denies each and every allegation contained in paragraph II, except, however, it is admitted that on July 5th, 1923, the defendant owned the lands specifically described in said paragraph.

II.

Denies each and every allegation contained in

paragraph III, and denies that the defendant is indebted to the plaintiff in any sum or at all.

For a second defense, the defendant alleges:

I.

That it is a corporation duly organized under the laws of the State of Washington, with its principal place of business in Grays Harbor County, State of Washington; that it has paid its license fee last due unto the State of Washington. [23]

II.

That the alleged contract referred to in the complaint and on which the plaintiff bases this action was not in writing, nor signed by this defendant, nor by any person by it lawfully authorized so to do, nor were the terms of any such alleged agreement in writing nor signed by this defendant, nor by anybody by it authorized, and the said alleged agreement is void under the statute of frauds. That the plaintiff did not perform any such alleged contract or render any services thereunder or furnish a purchaser to the defendant thereunder.

WHEREFORE, having fully answered, the defendant prays the dismissal of plaintiff's action.

W. H. ABEL,

Attorney for Plaintiff.

State of Washington,  
County of King,—ss.

H. B. Dollar, being first duly sworn, on oath deposes and says: That he is secretary of Vance Lumber Company, a corporation defendant herein and as such makes this verification, having the au-



thority so to do; that he has read the above and foregoing answer, knows the contents thereof and believes the same to be true.

H. B. DOLLAR.

Subscribed and sworn to before me this 23d day of June, 1925.

AL. von ATYINGEN,  
Notary Public in and for the State of Wash-  
ington, Residing at Seattle. [24]

EXHIBIT "C."

In the Superior Court of the State of Washington  
in and for King County.

No. 182,091.

R. M. GAUNT,

Plaintiff,

vs.

VANCE LUMBER COMPANY, a Corporation,  
Defendant.

JUDGMENT.

This case coming on for trial on the 18th day of December, 1925, and a jury having been sworn to try the case, the plaintiff having offered in evidence the contract of employment, and the Court holding the same insufficient, whereupon the defendant moved that the action be dismissed, and the Court having duly considered the same granted the said motion.

NOW, THEREFORE, in accordance with said premises, IT IS HEREBY ORDERED, AD-



JUDGED AND DECREED that this action be, and the same is hereby dismissed, the defendant to recover its costs and disbursements herein.

To all of which the plaintiff excepts and her exceptions allowed.

Done in open court this 22d day of December, 1925.

MITCHELL GILLIAM,  
Judge.

O. K. as to form.

CHAS. A. WALLACE,  
Attorney for Plaintiff.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 13, 1927. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [25]

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[Title of Court and Cause.]

EXCERPT FROM RECORD OF TRIAL SHOW-  
ING SUBSTITUTION OF EXECUTRIX.

Now, on this 22d day of March, 1928, this cause comes on for trial, Grosseup & Morrow appearing as counsel for the plaintiff and W. H. Abel for the defendant. A motion to substitute the executrix of Ruby M. Gaunt, deceased, is granted.

\* \* \*

Journal No. 2, at page 82. [26]

[Title of Court and Cause.]

DECISION.

5/21/22.

CHAS. A. WALLACE, Esq., J. O. DAVIES, Esq.,  
Solicitors for Complainant.

GROSSCUP, MORROW & WALLACE, of Coun-  
sel,

POE, FALKNOR, FALKNOR & EMORY and  
W. H. ABEL, Esq., Solicitors for Defendant.

NETERER, District Judge.—This is an action in equity for reforming a written contract of agency to sell land, by including certain lands claimed to be omitted, and enforcement of the contract “as and when reformed according to the principles applicable, by granting a money judgment in favor of the complainant.”

It is in substance alleged that a written contract was entered into whereby defendant agreed to sell “both real, personal and mixed” property of the defendant in its logging and lumbering business, which were omitted, either intentionally by the defendant or was due to a mutual mistake of the parties.

The omitted lands consisted of the Township of Malone, the millsite and the railroad rights of way, and logged-off lands, the farm and the lands reduced to cultivation.

The contract is claimed to be a plat and a letter dated July 5, 1923, which reads:

“The property consists of the sawmill with a capacity of 140,000 feet per 8-hour day, blacksmith and machine shops, planing mill with necessary dry kilns and dry lumber sheds, two shingle mills with dry kilns. We have just recently completed the installation of one 1,000 K. W. General Electric Co. turbine with necessary motors for supplying power for the above properties; office and store building complete with stock of merchandise; hotel with accommodations for 100 people; 65 cottages for the accommodation of employees with families; pool hall and picture show house. The logging equipment consists of one [27] 100-ton Baldwin rod engine (new), two Heisler geared locomotives, 17 donkey engines with necessary lines, blocks, etc., 2 steam shovels, 11 flat cars, 1 steel moving car, 3 oil tank cars, 42 connected logging trucks, 6 balast cars, camp cars for two camp units and about 14 miles of standard gauge railroad. Standing timber which will cut 400 million, about 75 to 80% fir, balance hemlock, spruce and cedar. There is about 500 million feet of standing timber available but not owned by the company. We are enclosing herewith plat showing our holdings together with holdings of other companies in this vicinity.”

The plat is unsigned, but contains the name, “Vance Lumber Company,” written by another, and while not attached to the letter, was enclosed.

The testimony of the secretary of the company was to the effect that at the time of the conversation with the plaintiff and of the letter, it was not in-

tended to sell any property other than described in the letter.

At the conclusion of the trial the court held that there was no evidence to support plaintiff's contention, and reformation was denied. Defendant moved to dismiss, and this motion was taken under advisement, and briefs from the respective parties invited.

CHAS. A. WALLACE, Esq., J. O. DAVIES, Esq.,  
Solicitors for Complainant;

GROSSCUP, MORROW and WALLACE, of  
Counsel.

POE, FALKNOR, FALKNOR & EMORY, and  
W. H. ABEL, Esq., Solicitors for Defendant.

NETERER, District Judge.—It is primer law that the Court may not make a contract for the parties. At the close of the trial the Court held that no evidence was presented warranting reformation. The most that can be said, the letter, with the plat, is the conclusion of the minds of the parties, and basis on which the minds met if they did meet. There was no mutual mistake. If the minds of the parties did not meet upon the letter and the map, there was no meeting of the minds. From the bill of complaint, the minds of the parties never met as to the identity of the property to be sold. The description of the property the court is asked to write into the contract was not included, but purposely excluded—testimony of Dollar, Secretary—and the seller's conclusion to sell was not changed until the time of sale to the Mason Logging Com-

pany, inspired by W. H. Abel, agent, through whom the sale, the testimony shows, was made, and it was the determining factor as the purchaser wanted all of the property and was therefore necessary to consummate the sale. Nor was there any segregation of the price of timber, or of land, or other properties in the letter; nor evidence of value; being indivisible, [28] the contract, if any, if void as to real estate, was void as to all. *Cushing vs. Monarch Timber Co.*, 75 Wash. 678; *White vs. Panama L. & S. Co.*, 129 Wash. 189.

All the property sold is not included in the letter or the map, even though plaintiff did show agency in selling, such act would be obnoxious to the statute; and this is true even though the letter and the map contained internal evidence of unity—which they do not.

An essential element of the memorandum required by the statute to be signed by the parties to be charged is a description of the thing to be sold and of the price to be paid. *Crafton vs. Cummings*, 99 U. S. 112, a "shingle plant situated in the city of Olympia, Washington," *White vs. P. L. & S.*, 129, Wash. 189, "shingle timber for sale in Clallam, County, Washington," *Engleson vs. P. C. S. Co.*, 74 Wash. 424, "My property including 121 acres of land near Ephrata, etc." *Baylor vs. Tolliver*, 81 Wash. 257, "my stock ranch located in Secs. 9, 17 and 21, Township 3 South, Range 13 East, Sweetgrass County, Montana," *Rogers vs. Lippy*, 99 Wash. 312, "my property, the 667-acre hay ranch located near Cataldo, Idaho," *Nance vs.*

Valentine, 99 Wash. 327,—are held to be insufficient descriptions to satisfy the statute. From any view of approach it appears there was no enforceable contract.

The Supreme Court of Washington for nearly a quarter of a century has uniformly held in construing the statute in issue, that the terms of the contract must appear from the writing itself, and that parol testimony may not be received to supply any deficiency, and in *McCrea vs. Ogden*, 54 Wash. 521, involving a broker's right to compensation under void contract, said:

“But the purpose of the law was to remove all doubt, and in doing so no injustice was done the broker, for it was always within his powers to make the contract or memoranda certain in every particular, including the party to be bound, which, notwithstanding the expression in the former opinion to the contrary, we regard as a first essential of the law, which element, if proven in this case, would necessitate a resort to parol testimony.”

The plaintiff asserts that the letter of the defendant of August 15, 1923, “as we are giving an option on the property that we offered for sale, please do not do anything further with this until you hear from us again,” or that more property was included, or other price obtained, would still entitle the plaintiff to recover; and cites *Duncan vs. Parker*, 81 Wash. 340, and *Keith vs. Peart*, 115 Wash. 552.

In the Duncan case, the authority of the broker to sell was not questioned. He had inaugurated the negotiations but was not permitted to complete them, but were concluded by the owner. In the Keith case, the broker's authority was likewise recognized, and after beginning negotiations and bringing the parties together, the owner carried forward these negotiations, but concluded it at a different price than that given to the agent, and the court held he was under the evidence disclosed, entitled to the commission. The letter of August 15 did not change the contractual status of the parties. [29]

While this Court did receive in the record the oral testimony, and did consider it in concluding upon the facts with relation to the reformation, the law of the state as construed by the highest court, as will be later stated, must control.

The plaintiff contends that while in the federal court oral evidence will be received to reform a contract required to be in writing by the state statute, insists that the Washington courts have likewise followed such rule in *Rosenbaum vs. Adams*, 63 Wash. 506; *Carlson vs. Druse*, 9 Wash. 542, and *Hazard vs. Warner*, 122 Wash. 687.

The *Rosenbaum* case as an action to reform a deed by which the southeast quarter was conveyed when the grantor and the grantee intended the southwest quarter, through mutual mistake, or of the scrivener in preparing the deed.

The *Carlson* case was an action to reform a deed in which there was a mutual mistake by including



the area in roads on the north and west boundaries of the tract, where it appears that the grantor, owning a  $5\frac{1}{2}$  acre tract, agreed to sell  $2\frac{1}{2}$  acres and measured it with a tape and set a stake on the east side of the west road, which he stated would be the boundary and which made  $2\frac{1}{2}$  acres exclusive of the roads, and later moved the stake 42 feet north and made a deed accordingly, so as to make but  $2\frac{1}{2}$  acres including both roads; that the grantor informed the grantee that "one-half of the north road comes with the tract." These cases are clearly not within the statute.

In the Hazard case there was an oral agreement to purchase all the seller's hay, both first and second cuttings, no tonnage given. The Court held the seller entitled to reformation of the written contract of the buyer offering to buy "250 about tons," on the ground that the contract, through mistake, didn't express the intent of the parties, unless the word, "about," be construed to include the entire crop.

Nor is *Am. Merchant Marine Ins. Co. vs. Tremaine*, 269 Fed. 376, within the statute, wherein the Court referred the written expression of the contract as found in the insurance policy.

The state statute as construed and applied by the highest court of the state, I think is practically uniformly applied in the federal courts.

In *Massey vs. Allen*, 84 U. S. 354 (17 Wall.), the Court, applying the statute of frauds of Missouri, said: "The statute, being a local one applying only to sales in Missouri, this court will follow

the construction given to it by the highest court of the state.”

In *Lloyd vs. Fulton*, 91 U. S. 487, the Court gave effect in an equity suit in a state where the English statute of frauds touching promises made in consideration of marriage is in force, and held an oral promise of the husband to settle his property on his wife, made before marriage, was void. [30]

In *Allen vs. Youngstown*, 39 Fed. 353, the Court declined to reform a written contract, and for specific performance, where the contract was void under the statute of Pennsylvania, and said: “Confessedly then, there is here no contract which legally binds the defendant, and if there is no such valid contract at law, upon what principle can the plaintiff be granted equitable relief here sought. Undoubtedly the above equitable statutory provision is as binding on a court of equity as on a court of law.”

*Richfield vs. Ballou*, 114 U. S. 190: “Certainly the general rule is that courts of equity cannot dispense with regulations prescribed by a statute, or supply any circumstance for the want of which the statute has declared the instrument void.”

*Walker vs. Hafer*, 170 Fed. 37 (6 C. C. A.), applying the statute of frauds of Ohio, in a suit for specific performance, the Court held the contract satisfied the statute.

In *Robinson vs. Belt*, 187 U. S. 43, the Court applied the statute of frauds, and said: “As the Arkansas statutes concerning assignments for the benefit of creditors and the statute of frauds were

extended and put in force in the Indian Territory by the act of Congress above cited, it becomes material to consider the decisions of the Supreme Court of that state with reference to the validity of the provision of an assignment exacting a release by creditors of all their demands against the assignor as a condition of preference.”

In *Beckwith vs. Clark*, 186 Fed. 171 (8 C. C. A.), in applying the Kansas statute of frauds, said: “Rules of property established by the construction of the highest judicial tribunal of the state of its Constitution or statute, prevail in the federal courts where no question of right under the Constitution or laws of the nation and no question of general or commercial law is involved.”

In *De Wolf vs. Rebaud*, 1 Peters, 472, Justice Story applied the state rule in New York as to the reception of parol evidence, and said: “What might be our own view on the question, unaffected by any local decision, it is unnecessary to suggest, because the decisions in New York upon the construction of its own statute and the extent of the rules deduced from them, furnish in the present case a clear guide for this court.”

In *York vs. Washburn*, 129 Fed. 565 (8 C. C. A.), a law action to recover money upon a contract void under the statute of frauds, the Court said: “The interpretation of a state statute by the highest court of the state establishes a rule of property, and is within the rule stated.”

In *Standard B. Co. vs. Curran*, 256 Fed. 69 (2 C. C. A.), the Court said: “This court will fol-

low a decision of the New York Court of Appeals construing the statute of the state of New York.”

In *Ballentine vs. Yung Wing*, 146 Fed. 621, a law action upon a contract within the statute of frauds, the Court said: “The state statute attacks the remedy. The *lex fori* governs, and it is such a law as has been declared by Congress to be a rule of decision in the federal courts. These propositions are too elementary to require citations. Under the Connecticut [31] decisions, the statute requires the memorandum of agreement to be complete, definite, and certain in all necessary details, and not some vague writing, which to be of value must be supplemented by conversations or aided by oral testimony to supply defects or omissions. Treating the plaintiff with every liberality, the statute of frauds appears to impede his further progress. The statute is directed at the remedy, and not at the evidence which might support a remedy, if one could be made operative.”

In *Moses vs. Bank*, 149 U. S. 299, a law action involving the statute of frauds of Alabama, the Court said: “It was argued on behalf of the original plaintiff that the validity and effect of the guaranty must be governed by the general commercial law without regard to any statute of Alabama, but there can be no doubt that the statute of frauds, even as applied to commercial instruments, is such a law of the state as has been declared by Congress to be a rule of decision in the courts of the United States.”

This Court In re Pac. Electric & Automobile Co., 224 Fed. 220, followed the construction of the state supreme court in applying the conditional sales contract statute.

In Omaha vs. Omaha Water Co., 194 Fed. 246 (8 C. C. A.), in passing upon the validity of a mortgage under the laws of Nebraska, the court said, at 249: "The decision of the supreme court of Nebraska concerning the nature and extent of the estate or rights of mortgagees in mortgaged property, are controlling upon us."

The contract in issue was void under the law of the *lex fori*, and is distinguished from Ackerlind, vs. U. S. 240 U. S. 531; in that case "the contract was not unlawful in the preliminary stages, or even void in a strict sense \* \* \* ." "There was a mistake made by a clerk in not striking out a printed clause from the requisition" which the Bureau of Supplies had notified the contractor was omitted.

To analyze and distinguish all of the cases cited by complainant would unduly extend this opinion.

The plaintiff contends that, the suit in equity having failed, the case should proceed at law on amended pleadings (Sec. 274a, J. C.; Sec. 397, Title 28, U. S. C. A.).

The records show that a previous law action in the state court was dismissed on motion of non-suit, because the contract was void under the state statute of frauds. This, defendant urges, is *res adjudicata*. This contention is not well founded, since Sec. 410, Rem. C. S., provides that judgment

of nonsuit does not bar another action on the same cause.

Whether the Court shall apply Equity Rule 23 or Sec. 274a, *supra*, must be determined by the present record, the general nature and scope of the case made. The suit is essentially in equity. The prayer of the complaint is for reformation of contract and decree enforcing referred contract by granting money judgment. The complainant failed for want of proof, and the legal question involved fell with the main suit. [32] Sec. 274a has no application and the suit must be determined according to the principles applicable under Equity Rule 23. See *Electric Boat Co. vs. Torpedo Boat Co.*, 215 Fed. 377; *Goldschmidt T. Co. vs. Primes Chem. Co.*, 216 Fed. 382; *Wright vs. Barnard*, 233 Fed. 329; *1st Saving Bank & Trust Co. vs. Greenleaf*, 294 Fed. 467; *Manger Laundry Co. vs. Nat. Marking Mach. Co.*, 252 Fed. 144.

The contract being void under the state statute of frauds, unenforceable at law, and equity determined against the relief prayed, the maxim, "*Aequitas sequitur legem*," applies; the suit must be dismissed. A formal order may be presented after notice to the other side.

NETERER,  
U. S. District Judge.

[Endorsed]: Filed May 21, 1928. [33]

In the District Court of the United States for the  
Western District of Washington, Northern  
Division.

IN EQUITY—No. 596.

RUBY M. GAUNT,

Complainant,

vs.

VANCE LUMBER COMPANY, a Corporation,  
Defendant.

DECREE.

This cause came on to be heard at this term, and, after the introduction of the evidence, was argued by counsel; and the Court having found that the complainant was not entitled to a reformation of said contract set forth in her bill of complaint, and that said contract was void under the statutes of the State of Washington and unenforceable at law; now, therefore, it is

ORDERED, ADJUDGED AND DECREED that this action be, and the same is hereby, dismissed, and that the defendant recover of and from the complainant its costs and disbursements hereafter to be taxed, to all of which plaintiff excepts and exceptions is noted.

Done in open court this 11 day of June, 1928.

JEREMIAH NETERER,

Judge.

[Endorsed]: Filed Jun. 11, 1928. [34]



[Title of Court and Cause.]

NOTICE OF APPEAL.

To the Vance Lumber Company and W. H. Abel  
and A. J. Falknor, Its Attorneys:

Please take notice that Carrie Gaunt, as executrix of the estate of Ruby M. Gaunt, deceased, plaintiff above named, has and does hereby appeal from the final decree entered against her and in favor of the defendant named in the above-entitled court and cause on June 11, 1928, dismissing her complaint, to the Circuit Court of Appeals of the United States for the Ninth Circuit.

B. S. GROSSCUP,  
W. C. MORROW,  
CHARLES A. WALLACE and  
JOHN O. DAVIES.

Service of the foregoing notice of appeals, petition on appeal, order allowing appeal, assignment of errors, citation on appeal and bond on appeal is hereby acknowledged and copy thereof received this 7th day of September, 1928.

\_\_\_\_\_,  
\_\_\_\_\_

Counsel for Defendant, Vance Lumber Company.

[Endorsed]: Copy of within received Sep. 7, 1928.

POE, FALKNOR, FALKNOR & EMORY,  
Attys. for \_\_\_\_\_.

[Endorsed]: Filed Sep. 7, 1928. [35]

[Title of Court and Cause.]

PETITION FOR AND ORDER ALLOWING  
APPEAL.

Now comes Carrie Gaunt, executrix of the estate of Ruby M. Gaunt, deceased, complainant in the above-entitled cause, believing herself aggrieved by the decree of the District Court of the United States, entered in this cause on the 11th day of June, 1928, to the extent only that said decree denies to the complainant the right of reformation of the contract sued upon in the bill of complaint, as prayed for in said bill of complaint, and in case the Circuit Court of Appeals shall be of the opinion and shall judge the complainant not entitled to the relief of reformation of the contract sued upon in the bill of complaint, but shall find that the contract sued upon was not within the statute of frauds of the State of Washington, then, and in that case, this appellant prays that the Circuit Court of Appeals determine the sufficiency of the said contract under the statute of frauds in the State of Washington, and that complainant was entitled to have said cause heard upon its merits concerning her right to recover under the allegations of her bill of complaint, and all the evidence in support thereof. [36]

The complainant prays that her appeal may be allowed and citation issued, as provided by the rules of this Honorable Court, and that transcript of the records, proceedings and papers may be duly au-

thenticated and sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California.

This petitioner further prays that an order be entered fixing the security required to perfect this appeal in such amount as the Court may determine.

B. S. GROSSCUP,  
W. C. MORROW,  
CHAS. A. WALLACE and  
JOHN O. DAVIES,  
Solicitors for Complainant.

#### ALLOWANCE OF APPEAL.

The above petition is granted and the appeal hereby allowed on giving bond conditioned as required by law in the sum of two hundred dollars (\$200.00).

Dated this 7 day of September, 1928.

JEREMIAH NETERER,  
U. S. District Judge.

[Endorsed]: Filed Sep. 7, 1928. [37]

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[Title of Court and Cause.]

#### ASSIGNMENT OF ERRORS.

Now comes the complainant in the above-entitled cause by her solicitors and shows to this Honorable Court that the decree in the above-entitled cause made and given on the 11th day of June, 1928, is

erroneous and does not give to the complainant the relief to which she is entitled, in the following particulars, to wit:

### I.

The Court committed error in finding that the testimony in said cause did not show and establish fraud in the execution of the contract sued upon in said cause.

### II.

The Court was in error in finding that the testimony in said cause did not show mutual mistake in the execution of the contract sued upon in said cause.

### III.

The Court erred in finding that under the testimony in said cause said contract so sued upon in the bill of complaint was within the statutes of frauds of the State of Washington and therefore void and unenforceable.

### IV.

The Court erred after having ruled that the evidence was insufficient to reform the contract on the [38] ground of either fraud or mutual mistake, in refusing to proceed to adjudicate the cause upon the contract as set forth in the bill of complaint and evidence produced at the hearing, and in refusing to determine the right of the parties under said contract.

V.

The Court erred in entering a decree dismissing plaintiff's cause of action.

B. S. GROSSCUP,  
W. C. MORROW,  
C. A. WALLACE and  
JOHN O. DAVIES,  
Solicitors for Appellant.

[Endorsed]: Filed Sep. 7, 1928. [39]

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[Title of Court and Cause.]

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS: That we, Carrie Gaunt, executrix of the estate of Ruby M. Gaunt, deceased, as principal and American Surety Company of New York, as surety, acknowledge ourselves to be jointly indebted to the Vance Lumber Company in the sum of Two Hundred Dollars (\$200.00), conditioned that whereas on the 11th day of June, 1928, in the District Court of the United States for the Western District of Washington, Northern Division, in a suit pending in that court wherein Carrie Gaunt, as executrix of the estate of Ruby M. Gaunt, deceased, was substituted as plaintiff therein and the Vance Lumber Company, a corporation, was defendant on the Equity Docket No. 596, a decree was entered against the plaintiff and in favor of the defendant denying plaintiff the right to reform a contract sued upon

in her bill of complaint in the above-entitled action, and dismissing said cause, has appealed from the order and decree so made and entered into, to the United States Circuit Court of Appeals for the Ninth Circuit to be holden in the City of San Francisco in the State of California,—

Now, if the said principal shall prosecute her appeal and answer and pay all costs if she fails to make good her appeal then the above obligation to be void; otherwise to remain in full force and effect. [40]

Dated this 7th day of September, 1928.

CARRIE GAUNT,  
Executrix of the Estate of Ruby M. Gaunt, Deceased.

By J. O. DAVIES,  
CHAS. A. WALLACE,  
Solicitors for Appellant.  
AMERICAN SURETY COMPANY OF  
NEW YORK.

By A. E. KRULL,  
(A. E. KRULL),  
Its Resident Vice-President.  
Attest: TOM C. STERNE,  
(TOM C. STERNE),  
Its Resident Assistant Secretary.

The foregoing bond is hereby approved this 7th day of September, 1928.

JEREMIAH NETERER,  
U. S. District Judge.

[Endorsed]: Filed Sep. 7, 1928. [41]

[Title of Court and Cause.]

STATEMENT OF THE EVIDENCE.

This cause came regularly on for trial before the Honorable Jeremiah Neterer, one of the Judges of said court, on March 22, 1928.

The plaintiff was present, represented by Charles A. Wallace and John O. Davies.

The defendant was present and represented by W. H. Abel and A. J. Falknor.

WHEREUPON the following proceedings were had and evidence taken:

The death of Ruby M. Gaunt being suggested to the Court the Court made an order substituting Carrie Gaunt as executrix of the estate of Ruby M. Gaunt, deceased, for the plaintiff Ruby M. Gaunt.

Mr. WALLACE.—Now, if the Court please, at this time we would like the Court to call a jury in this case. This is an action for reformation of a contract and for recovery of a commission for sale of land, which was performed. The question of whether or not our client sold the lands or was the procuring cause of the sale is a question which is, under the law, triable by a jury, and we should have a jury called for that [42] purpose.

The COURT.—This case was noted and I was advised that it was a court case, and I excused the jury until next Tuesday morning. It seems strange—

Mr. WALLACE.—(Interposing.) Well, your



Honor, we were informed just about two o'clock that the Court had entered into the trial of another case, and for that reason I wasn't here.

The COURT.—It was an action to reform a contract, an equity case, and was treated as an equity case all along, and the jury is excused until next Tuesday morning.

Mr. WALLACE.—I am very sorry, your Honor.

The COURT.—This is an action to reform a written contract of employment, which is clearly equitable, and for a decree enforcing said contract.

Mr. WALLACE.—Yes, and for a judgment, money judgment, upon the contract, if the jury should find that she has performed her contract.

The COURT.—The motion to call a jury is denied so far as the reformation of the contract is concerned.

Mr. WALLACE.—Well, of course, your Honor, we are not asking for a jury for the purpose of reforming the contract. That is not a part of our motion.

The COURT.—Well, we have no jury; it was excused until Tuesday morning. Are the parties ready to proceed?

Mr. WALLACE.—Yes; your Honor.

The COURT.—And the defendant?

Mr. ABLE.—Yes; your Honor.

The COURT.—Proceed.

Mr. WALLACE.—Then it is not necessary to read the pleadings [43] to the Court.

The COURT.—No. Have you copies?

(Testimony of Harry B. Dollar.)

Mr. WALLACE.—We do not seem to have. We were working on the matter in our office, and we gathered up our papers hurriedly.

The COURT.—I just read the pleadings—I mean I read the complaint in full, and I glanced through the answer.

Mr. WALLACE.—Mr. Falknor, did you get the certified copy of the transcript in the Supreme Court?

Mr. FALKNOR.—Yes.

Mr. WALLACE.—May I have it, please.

(Opening statements by counsel.)

(During opening statement by Mr. Able.)

Mr. WALLACE.—Pardon me, Mr. Able—I think counsel is arguing the case. I do not see that this is necessary, all this minute detail.

The COURT.—I am just taking from both of you that we are simply trying to reform a contract here.

Mr. WALLACE.—Yes; that is all.

Mr. ABLE.—Yes. Well, I am about through, anyway.

#### TESTIMONY OF HARRY B. DOLLAR, FOR PLAINTIFF.

HARRY B. DOLLAR, called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

##### Direct Examination.

My name is Harry B. Dollar. I reside in Vancouver, British Columbia. In July and August, 1923, I resided at Malone in the State of Washing-

(Testimony of Harry B. Dollar.)

ton, which is in Grays Harbor County. I was secretary of the Vance Lumber Company and also a director of the company, and a stockholder.

The document shown me, Plaintiff's Exhibit No. 1, is a letter I wrote to Miss Gaunt on July 5, 1923. I [44] enclosed a plat with that letter. Plaintiff's Exhibit No. 2 is the plat that was enclosed with the letter.

"The defendant objected to the introduction in evidence of Plaintiff's Exhibit 2, being the alleged plat, for the reason that the identification of the plat is by parol and is in violation of the statute of frauds, and the plat itself is insufficient under the statute of frauds."

The writing on the top of Plaintiff's Exhibit No. 2, in ink, was not put on by me, and the "W. M." was not put on by me. All other writing was put on by me. I put everything on the map that is on it, including the colored sections, except the ink writing.

The document you handed me, Plaintiff's Exhibit No. 3, is a copy of the contract of sale from the Vance Lumber Company to the Mason County Logging Company, made on January 9, 1924.

"The defendant objected to the introduction in evidence of Plaintiff's Exhibit 3, for the reason that no relation is shown between this exhibit and the alleged contract on which the suit is based, and for the reason that the same is unintelligible unless the descriptions are compared with those of the plat, as they manifestly do not coincide or agree."

(Testimony of Harry B. Dollar.)

There was no other paper or document enclosed with the letter of July 5, 1923, except Plaintiff's Exhibit No. 1 and Plaintiff's Exhibit No. 2.

Plaintiff's Exhibit No. 5 is a letter I wrote on behalf of the Vance Lumber Company to Miss Gaunt.

Plaintiff's Exhibit No. 6 is an option given by the Vance Lumber Company to the Mason County Logging Company [45] in the latter part of August, 1923, to purchase the holdings of the Vance Lumber Company. It was an option to sell all of the holdings of the Vance Lumber Company and its logging operations around Malone. That is the option referred to in my letter to Miss Gaunt.

When I made up Plaintiff's Exhibit No. 2 and sent it along with the letter I did not describe on the face thereof in color all of the land belonging to the Vance Lumber Company.

Plaintiff's Exhibit No. 7, of date of August 29, 1923, is a letter to Miss Gaunt by the Vance Lumber Company and signed by me.

The defendant objected to the letter as wholly incompetent, that it bore no relation to the matter set forth in the letter of July 5th, and evidently pertained to a distinct prospective sale of the property to someone other than the Mason County Logging Company.

Plaintiff's Exhibit No. 8 is a copy of a letter that I received from Miss Gaunt. I received the original about the date it bears.

(Testimony of Harry B. Dollar.)

Plaintiff's Exhibit No. 9 is a copy of a letter that I received from Miss Gaunt on or about August 29, 1923.

Plaintiff's Exhibit No. 10 is a copy of a letter the original of which I received from Miss Gaunt at about the date it bears.

The option given, Plaintiff's Exhibit No. 6, was thereafter extended and was still in force and effect by extension up to and including the date of the making of the sale and the signing of the contract of sale Plaintiff's [46] Exhibit No. 3.

I never answered Miss Gaunt's letter, Plaintiff's Exhibit No. 9. I received it a day or two after it was written.

Plaintiff's Exhibit No. 11 is a letter from the Vance Lumber Company to Miss Gaunt signed by me and dated September 3, 1923.

Plaintiff's Exhibit No. 12 is a letter from the Vance Lumber Company, signed by me, to Miss Gaunt, dated July 11, 1923.

The reason I did not describe in the plat, Plaintiff's Exhibit No. 2, all of the lands belonging to the Vance Lumber Company according to the letter which I wrote enclosing it, was that I did not intend to sell all.

Q. Did you intend at the time to sell all of the property that the Vance Lumber Company owned and held, both real and personal— A. No.

Q. Wait a minute—in connection with its logging operations at and near Malone, Washington?

A. No.

(Testimony of Harry B. Dollar.)

Q. What properties did you intend to exclude from that sale?     A. All the logged-off lands.

When the option of August 28 was given we included the logged-off lands.

The logged-off lands were included in the option of sale because Mason County insisted on including them.

I did not consult Miss Gaunt about taking a less price for the property than that which I had offered in [47] my letter to her.

When I wrote the letter to Miss Gaunt of date of July 5, 1923, I intended to leave out the logged-off lands belonging to the Vance Lumber Company. The reason I did not say to her in that letter that I was leaving them out, was that I did not consider it necessary.

Plaintiff's Exhibit No. 13 is a copy of a letter from Miss Gaunt to myself, of date of December 17, 1923, the original of which I received about that date. Malone is about seventy-five miles from Tacoma and ordinarily a letter mailed from Tacoma would reach my office in Malone the next day.

#### Cross-examination.

I was associated with the Vance Lumber Company sixteen years, during and immediately preceding the time of this option. I severed my relations with the Vance Lumber Company in 1927.

There were three trustees, myself and Mr. and Mrs. Vance.

In my letter of August 15, 1923, I mentioned

(Testimony of Harry B. Dollar.)

the fact that we were giving an option. It was an option to the Mason County Logging Company.

The Vance Lumber Company had been negotiating with the Mason County Logging Company, with reference to the purchase, for about a year and a half Mr. Able had had this up with the Vance Lumber Company about a year and a half before the option was given. Mr. Able had been seen many times in connection with the giving of this option, during the year and a half. Miss Gaunt had nothing whatever to do with the securing of the option which was given in [48] August to the Mason County Logging Company.

Miss Gaunt wrote a letter. I have forgotten the exact date, that she would come on that date. She was alone when she arrived. She told me that she had come to look at the property and that there was a party representing some eastern people would be there shortly after she arrived. This party was Mr. Wilson. He was staying at Aberdeen at the time. Mr. Wilson came there the same day Miss Gaunt was there.

Miss Gaunt represented that Mr. Wilson was representing an eastern company that was interested in the purchase of this timber. Mr. Wilson led us to believe that he was representing an eastern firm. He made no objection to Miss Gaunt's statement as to his representation that he was acting for an eastern firm in the purchase of this property. We did not know that our property had been offered at Aberdeen until we learned of it through



(Testimony of Harry B. Dollar.)

Anderson-Middleton. At the time that we received Miss Gaunt's letter, where she indicated she had sent the plat to Mr. Reed, we had already been negotiating for the sale of the timber to the Mason County Logging Company for about a year and a half. These negotiations with the Mason County Logging Company were active during the months of May, June, July and August, 1923. Miss Gaunt did not find the Mason County Logging Company as a purchaser. She at no time ever mentioned to us in any way the Mason County Logging Company. We never saw her but the one time prior to the giving of the option. That was at the time when she and Mr. Wilson came to Malone and discussed the sale to an eastern buyer. After the execution of the option with the Mason County Logging Company, negotiations continued [49] until January 9, 1924. The timber was cruised. Neither Miss Gaunt nor Mr. Wilson ever came and went over the land that was being sold. Neither Mr. Wilson nor Miss Gaunt at any time before the execution of the option ever mentioned to us, or the Vance Lumber Company, the Mason County Logging Company as a purchaser. The negotiations for the giving of the option to the Mason County Logging Company had been carried on through Mr. Abel. The active head of the Mason County Logging Company was Mr. Thomas Bordeaux.

Mr. Wilson led me to believe he was representing an eastern firm.

(Testimony of Harry B. Dollar.)

Defendant's Exhibit "A-1" is a letter I received from Miss Gaunt.

Defendant's Exhibit "A-2" is a letter I received from Miss Gaunt.

At the time I wrote Miss Gaunt the letter, in August, to the effect "Do nothing further," I was concluding an option with the Mason County Logging Company and was desiring to withdraw the sale of the property entirely from the market.

Prior to the giving of the option I had seen Miss Gaunt just once. That was at the time she and Mr. Wilson came to Malone. There was nothing said to me by Mr. Wilson at that time about eastern buyers wanting the logged-off lands.

The sale to the Mason County Logging Company was finally consummated on January 9, 1924.

#### TESTIMONY OF ISAAC A. WILSON, FOR PLAINTIFF.

ISAAC A. WILSON, called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

##### Direct Examination.

I am Isaac A. Wilson. I reside in Seattle. I knew Ruby M. [50] Gaunt in her lifetime. I know Harry B. Dollar.

I saw Miss Gaunt and Mr. Dollar on May 12, 1923, in the office of the Vance Lumber Company at Malone, Washington. My purpose in going there was to get a contract to sell their timber and equip-

(Testimony of Isaac A. Wilson.)

ment, logging equipment, mill, logged-off lands, all their holdings. That is the Vance Lumber Company timber.

At that time I told Mr. Dollar that I had eastern prospective buyers and also explained to Mr. Dollar that I had prospective western buyers.

At that time Mr. Dollar explained that they wanted to sell all their holdings, logged-off lands, mill, townsite, timber, etc.

At that time Miss Gaunt had a plat with her at his office. Plaintiff's Exhibit No. 2 is the plat she took to Malone with her. The ink writing on this plat is my own writing, in asking Mr. Dollar to describe the different timbers held by different companies adjoining their timber.

The purpose was when I would show their timber to people I could explain there was other timber adjoining to be had.

I put the ink writing on this plat, everything that is in ink, on it before it was delivered to Mr. Dollar at that time. I did that at Mr. Vance's office at Malone. That was before it was filled out. Before the coloring was put on it. This writing was on there at the time it was talked over with Mr. Dollar.

I saw the plat after it came back to Miss Gaunt. I did no writing on it after it came back to Miss Gaunt. I saw it shortly after she got it. It is the same [51] condition now that it was the first time I saw it after she had received it.

(Testimony of Isaac A. Wilson.)

Mr. Dollar at that time said that they wanted to sell everything, including the logged-off lands. He said they were to sell all of their holdings at Malone, State of Washington.

I asked Mr. Dollar for a plat and a legal description showing their holdings and also the adjoining timber and he agreed to it. He agreed at that time to give us a legal description of all their lands, all their holdings including logged-off lands and timber.

He showed us the mill, the machine-shop, and the like of that.

He said that on account of Mr. Vance's illness they wanted to dispose of their holdings and retire from business. He also showed us the theatre and I think a little store and the hotel, and he explained that there were about fifty or sixty cottages, something like that. He, at that time, enumerated the logging equipment which he had. He explained to us about how much logging equipment there was, and then finally furnished a list showing exactly what there was.

#### Cross-examination.

I am interested in the collection of the commission in this case. I get ten per cent.

(Defendant's Exhibit "A-3" admitted in evidence.)

At the time Miss Gaunt and I had the conversation with Mr. Dollar there was nothing said about a farm and I knew nothing about a farm being a

(Testimony of Isaac A. Wilson.)

part of the property. I did not know that the Vance Lumber Company owned [52] a farm right there by Malone. It was just the logged-off land, the timber and the equipment. He did not explain anything about some of the land being reduced to cultivation. Nothing was said about the Garden Tracts. I did not know how much logged-off land there was.

We were there one or two hours.

At that time Mr. Dollar explained that Mr. Vance was sick and that Mr. Vance had been in the hospital for some time.

I just had prospective buyers at that time.

I was not representing any one particular eastern buyer, and at the time that she said in one of her letters that she had a real buyer, it was only a prospect.

(Plaintiff's Exhibit No. 14 received in evidence, being a letter of date of August 27, 1923, referring to the option, Plaintiff's Exhibit No. 6.)

Mr. WALLACE.—That is all, your Honor.

The COURT.—The plaintiff rests.

Mr. FALKNOR.—If the Court please, Mr. Abel tells me that before I came in there was some suggestion made between Court and counsel as to the question of the reformation of the contract. Now, it is my understanding that courts of equity when they take jurisdiction of a case take jurisdiction for all purposes.

The COURT.—Yes.

Mr. FALKNOR.—And I assume that when your Honor takes jurisdiction of this case for reformation your Honor will retain jurisdiction until the case is disposed of under the issues of the pleadings, and if that is the situation we will go ahead and make our proof. [53]

The COURT.—The law used to be that before a person could sue upon a contract in law he had to enter a court of equity and correct, rectify and reform the contract, and then bring a new action on the law side upon that contract, but now they can have the equitable relief and the legal relief in the same action.

Mr. FALKNOR.—Yes. In this suit, your Honor, they sue for the two things, they sue for the reformation and the full relief.

The COURT.—I understood yesterday that you were simply proceeding to see whether this contract should be reformed.

Mr. FALKNOR.—No.

The COURT.—That is all I want to dispose of now.

Mr. ABEL.—To reform and enforce the contract?

The COURT.—Just to reform.

Mr. WALLACE.—The other issue is not being tried by the Court at this time, and we haven't introduced any evidence.

Mr. FALKNOR.—My recollection is that this complaint seeks a judgment of fifty thousand dollars.

Mr. WALLACE.—That is true, Mr. Falknor.

Mr. FALKNOR.—That is the point I am making. The issues have been made up on the two points, namely, first, reformation, and then after the reformation enforcement of the contract in this particular action.

The COURT.—Well, that is all we will do now. This is really a bill in equity to reform the contract and to enforce it.

Mr. WALLACE.—Yes.

The COURT.—We will proceed and see whether the contract [54] ought to be reformed, unless the parties want to submit the whole matter.

Mr. WALLACE.—I want a jury trial on the question of whether or not my client was the procuring cause of this sale.

Mr. FALKNOR.—That is the point, your Honor. We are here to try this case according to the issues made by the pleadings. They having come in here and sought in this action a reformation and enforcement of the contract they are not now in a position to come in and say they want to try it piecemeal. Is it their idea in this same action to ask reformation and then afterwards in this same action to submit the case to a jury?

Mr. WALLACE.—Yes.

(Argument and discussion.)

The COURT.—I will determine this upon this reformation feature now.

Mr. FALKNOR.—We will go ahead then and make our proof on the merits as well.



(Testimony of J. A. Vance.)

The COURT.—Well, you can if you want to, but you do not need to.

Mr. ABEL.—Your Honor will recall that the other side has gone beyond the reformation.

The COURT.—I know, there is some evidence that went beyond it, explaining the other, and I am willing you may do the same thing.

#### TESTIMONY OF J. A. VANCE, FOR DEFENDANT.

J. A. VANCE, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

##### Direct Examination.

My name is J. A. Vance. I am president of Vance Lumber Company and I and my wife are the principal owners of it. [55]

Mr. Dollar at this time has no interest in the company.

I met Miss Ruby M. Gaunt before July 5, 1923, in the office here in Seattle, That was about June 16, 1923. I fix the date as about the time of Defendant's Exhibit "A-4."

I met her that one time only.

At the time Miss Gaunt and Mr. Wilson met Mr. Dollar at Malone Mr. Dollar was authorized to do general business for the company. Mr. Dollar at that time was not particularly authorized to make any deal with Ruby M. Gaunt.

(Testimony of J. A. Vance.)

On July 5, 1923, there was no intention of the Vance Lumber Company selling all of its property of every kind wherever situated.

The agreement, or whatever it was that was sent to her, included all of the property that we figured on selling at that time. It did not include the farm; it did not include the logged-off lands. Later, when we made the sale to the Mason County Logging Company, we included those. Vance Lumber Company had a lumber yard at Elma, which is about five miles from Malone. The Elma yard was first offered for sale January 7, 1924, I think. It was finally put in the Mason County Logging Company deal in order to make the deal.

There were some Garden Tracts there which were finally included in the Mason County Logging Company sale. They are not described on this plat. Roughly speaking there were about ten or twelve hundred acres logged-off land.

#### Cross-examination.

There was some logged-off land in sections 2 and 4, township 17, range 5; there was some logged-off land [56] in township 18, five and 32; some in 26, 18 and 5. Our railroad ran into that section at that time. That is all logged-off.

We own the timber on section 36, in eighteen, five. We also own twenty-five, in eighteen, five. We did not own the land in thirty-five, in eighteen, five. We owned the land in thirty, in eighteen, four. That was not logged-off. There was some

(Testimony of J. A. Vance.)

logged-off in section 31, in eighteen north of range four.

Section 11, in seventeen, five was not logged-off.

We owned three-quarters of section 12, township 17 north of range 5.

We did not describe on Plaintiff's Exhibit No. 2 all of the land that the Vance Lumber Company owned. It was not our intention to sell the logged-off land.

I wrote that letter, Plaintiff's Exhibit No. 15, to Miss Gaunt. At the time Mr. Dollar sent over the letter and plat Mr. Dollar and I had talked it over. I do not remember exactly whether I told him to give her this plat and send this letter to her or not.

I do not remember the exact words I said now.

I knew at that time that she was after a contract for the sale of all our timber and our mill and everything we owned over there, and I talked to Mr. Dollar about it and then as a result of that talk it is a fact that Mr. Dollar wrote that letter to her on July 5, 1923. And at that time I intended to withhold a part of these lands. I intended to hold the logged-off lands, the farm land, the Garden Tracts and the Elma Yard. [57]

The letter of May 7, 1921, was in response to another letter of date of April 30, 1921—Plaintiff's Exhibit No. 16.

TESTIMONY OF W. H. ABEL, FOR DEFENDANT.

W. H. ABEL, called as a witness on behalf of defendant, being first duly sworn, testified as follows:

Direct Examination.

My name is W. H. Abel. I reside at Montesano, Washington. I have lived there since 1892. I was connected with the sale of the lands of the Vance Lumber Company to the Mason County Logging Company.

I was connected with the sale of the lands from February, 1922, up to the time the sale was finally closed, as attorney for each party.

I was intimately associated with the Vance Lumber Company. I had been their attorney, perhaps always. I had sat in on their original purchase when they bought their millsite, when they started up at Malone, and at all times since then.

I was familiar with their plans with reference to the sale.

I began negotiations for the sale of these properties to the Mason County Logging Company on February 7, 1922. On that date, I wrote a letter to Mr. Bordeaux about giving an option.

Q. Now, Mr. Abel, as briefly as you can, go ahead and relate to the Court the evidence within your knowledge, particularly the evidence bearing upon the lands that they contemplated selling in

(Testimony of W. H. Abel.)

July, 1923, and the inclusions of other and additional lands later on.

Mr. WALLACE.—If the Court please, it seems to me this goes [58] entirely to the question of the procuring cause, and if we are to be permitted to have a jury hear this it ought not to have to be repeated again. It is not pertinent to the issue as to whether or not the contract shall be reformed.

The COURT.—I think, in the first place, the Court must determine whether there is a contract before it can be reformed. I am not going to sit here simply as a bump on a log to see if something shall be done for which there is no basis. The first thing I want to know is whether there is a contract, and then whether it is to be reformed. I am not going to sit here and do an idle thing.

On June 11, 1923, and June 12, 1923, I was in Seattle with Mrs. Abel, where we attended a wedding, and I had a day or two on my hands and I visited Mr. Bordeaux.

A few days later, following that up, I wrote to Mr. Bordeaux, on June 20th, 1923. The letter is attached to his deposition. On June 21, 1923, I received a letter from him on that subject saying that he would be in Bordeaux on the following Wednesday, which would be June 27th. That letter is attached to his deposition. This related to the sale of these properties.

On June 27th, with my son, I went to Bordeaux, my secretary, I think, first having telephoned, and I spent several hours with him. We had the plats,

(Testimony of W. H. Abel.)

the railroad map of the company, the timber map of the company, the timber map of Grays Harbor County, the logged-off land map of Grays Harbor County, the taxes owing map of the county, and we discussed the whole matter with him.

On June 29th, 1923, he and Russell Bordeaux [59] came to my office. This was for the purpose of closing the purchase of the section of land from Anderson & Middleton Timber Company. I use this incident to fix the date. At that time I had another talk with Mr. Bordeaux about getting an option on these Vance properties, and that was followed up later by a letter from me on July 17th, which is contained in the deposition of Mr. Bordeaux, in which I told him what properties were for sale by the Vance Lumber Company. This letter follows:

July 17th, 1923.

Thomas Bordeaux,  
1215 Alaska Bldg.,  
Seattle, Washington.

My Dear Mr. Bordeaux:

I had a talk with Harry Dollar, of Vance Lumber Company, and after he had talked matters over with Mr. Vance, said they were holding the property at \$3,250,000. He says that same included the following:

Saw mill with a capacity of 140,000 feet per eight hour day, blacksmith and machine shops. Planing mill with necessary dry kilns and dry lumber sheds. Two shingle mills with dry kilns.

(Testimony of W. H. Abel.)

Newly completed installation of 1000 K. W. General Electric Company turbine with necessary motors for supplying power for the above properties. Office and store building with stock of merchandise, hotel with accommodation for 100 people. 65 cottages for the accommodation of employees with families, pool hall and picture show house.

The logging equipment consists of one 100-ton Baldwin rod engine (new), two Heisler geared locomotives, 17 donkey engines with necessary lines, blocks, etc., 2 steam shovels, 11 flat cars, 1 steel moving car, 3 oil tank cars, 42 connected logging trucks, 6 balast cars, camp cars for two camp units and about 14 miles of standard gauge railroad. Standing timber which will cut four hundred million, about 75 to 80% fir, balance hemlock, spruce and cedar.

At this price he will give terms.

Yours truly,

W. H. ABEL.

P. S.—I am informed there is about 500 million feet of timber tributary to the Vance Lumber Co. operation not in hands of operators.—W. H. A.  
[60]

The logged-off lands were not then for sale and the yard at Elma, which is real estate, was not for sale; the garden tracts, which were improved land, formerly logged-off land, were not for sale, up on the hill from Malone; nor was the farm.

Q. Those are the properties that they are seeking to include in this contract?



(Testimony of W. H. Abel.)

A. Yes. None of those were for sale by the company at that time. Part of them, however, were put in the option to the Mason County Logging Company on the insistence of Mr. Bordeaux that if he was going to buy he had better buy those too. But still others of the properties were only put in three days before the sale was closed, for the purpose of making the sale to the Mason County Logging Company.

Q. When you began your active negotiations in June, 1923, for the sale to Mr. Bordeaux, were there any properties for sale other than those that were referred to in this letter of July 5?

A. That was the operating properties, including the mill and millsite, which is not specified, and not described upon the plat which is in evidence at all. There is no description whatever of the millsite, which is the most valuable land of all.

Q. That was part of the property that was to be sold? A. Yes.

Q. And then there were some buildings adjoining for the occupancy of the employees?

A. Yes.

Q. Is that land described on this plat? [61]

A. Not at all. There were some sixty-two houses, I believe, besides the store buildings and theatre.

Q. Those lands were entirely omitted?

A. Yes.

Q. From this plat?

(Testimony of W. H. Abel.)

A. Yes; no description in the plat or otherwise in any writing whatever.

The logged-off lands were included in the option to Mason County Logging Company. I drew that option myself and submitted the form to Vance Lumber Company.

It was agreed to include that following the letter of July 17, 1923. The exact date I cannot say off-hand, but it was subsequent to that date.

There are some farms on logged-off lands. Some of them are cleared. Logged-off lands have no relation to the logging and lumber operations whatever.

Q. Have you any idea about how extensive those logged-off lands were?

A. Well, I had thought that there were nearly three sections of them.

Then the Elma yard was ultimately included in the sale. That was included the Saturday night before the deal was closed. The deal was closed on Tuesday.

When I began active negotiations in June, 1923, for the sale to Mr. Bordeaux of the Vance Properties, there were operating properties, including the mill and millsite, which is not specified and not described upon the plat which is in evidence, that were for sale. There is no description whatever of the millsite, which is the most valuable land of all, which was for sale. Then there were some [62] buildings adjoining for the occupancy of the employees, some sixty-two houses besides

(Testimony of W. H. Abel.)

the store buildings and theatre. These were for sale, and these lands are entirely omitted from the plat in evidence.

The logged-off lands were included in the option to the Mason County Logging Company. That was following the letter of July 17, 1923. These logged-off lands are capable of being made into valuable farm land. They have no relation to the logging and lumbering operations, and the sale of the timber and the mill would not require in any wise the acquiring of these logged-off lands. There are about three sections of them.

The Elma yard was also included in the sale. This was located on land owned by the Vance Lumber Company. The Mason County Logging Company acquired these lands through me, and I received the fee for putting the deal through.

That while I know Mr. Reed well—he lives at Shelton—I personally know that he is not active in the management of the Mason County Logging Company. He had nothing to do with this deal until the Saturday before the deal was closed, when we were in the closing stages. The negotiations were carried on entirely with Thomas Bordeaux and his sons and Joseph Bordeaux, now deceased. They were the active operators of the Mason County Logging Company. Thomas Bordeaux was the president. I do not know what official position other than trustee, Joseph Bordeaux, deceased, held, but the young men were very active.

(Testimony of W. H. Abel.)

Ray Bordeaux and Russell Bordeaux were the active men in managing the company. [63]

Cross-examination.

The first letter was February 7, 1922, that I found bearing upon the deal. I doubtless had previous talks with Mr. Bordeaux about acquiring the Vance holdings.

At that time, the Vance Lumber Company was holding the property around two million dollars, But as I recollect it, after that the Vance Lumber Company purchased from the Hewitt Land Company, in November, 1922, some property for \$450,000, and also some property from the Milwaukee. I am not sure whether the purchase from the Milwaukee was before February 7, 1922, or not.

I got a letter from Mr. Bordeaux, being the letter referred to of February 16th, attached to his deposition. When I wrote my letter of March 23, 1922, I had a very general list of his assets, the estimated valuation. While there was no communication between March 29, 1922, and the following June, I met Mr. Bordeaux nearly every time I came to the city, and on June 11 and 12, 1923, we discussed this very thing—the purchase of the Vance Lumber Company holdings and the rounding out of the timber at the head of Porter Creek over to Perry Creek.

While there were no letters between June 21, 1923, and July 17, 1923, during that period we had

(Testimony of C. Ray Bordeaux.)

the meeting of June 26th at Bordeaux and we had the meeting at my office on June 9th.

## TESTIMONY OF C. RAY BORDEAUX, FOR DEFENDANT.

### Direct Examination.

My name is C. Ray Bordeaux. I have been the secretary-treasurer and manager of the Mason County Logging Company since 1922, or thereabouts, and was manager during all of 1923, and during the time the Vance Lumber Company [64] sale was made. There were several properties which were purchased which were not originally offered and which we had not intended to purchase, such as some of the logged-off lands, the Garden Tracts, a farm, and the Elma yard. These were included as the negotiations progressed.

The matter was first submitted to me, about buying these properties, something like a year and a half before we closed the deal. We never heard of Miss Ruby M. Gaunt in connection with finding the Mason County Logging Company as a buyer of this property, and never met the lady.

Mark E. Reed was not active in connection with the management of the Mason County Logging Company. He was running another company. While he was a director of the Mason County Logging Company, he was never called in except when it came to a matter of final negotiation. He was

(Testimony of C. Ray Bordeaux.)

operating the Stimson Logging Company, a good many miles away.

Cross-examination.

When the plat came in from Mr. Reed, we were already dealing with Mr. Abel, and no attention was given to it as it furnished no information that we did not already have. We had the information from the Vance Lumber Company a long time before the receipt of the plat, as to their being willing to sell their properties. We had talked to Mr. Abel a year and a half or two years previous to that time, and he told us he would keep us in touch with the situation when the opportunity developed.

TESTIMONY OF W. D. ABEL, FOR DEFENDANT.

Direct Examination.

My name is W. D. Abel. W. H. Abel is my father. Some time in June, 1923, I went with my father to [65] the town of Bordeaux. He talked over at that time with Mr. Thomas Bordeaux concerning the sale of the Vance properties, in connection with which he had been working with them for some time. He showed to Mr. Bordeaux maps and plats, and they went over the topography, showing the location of the Vance properties. We were there from noon until about three o'clock in the afternoon.

(Defendant's Exhibit "A-5" admitted in evidence.)

The deposition of Thomas Bordeaux with the attached exhibits was offered and admitted in evidence. Marked Exhibit ——.

Mr. FALKNOR.—The defendant at this time, your Honor, asks the Court to deny reformation and to dismiss this action for the following reasons: First, there is no contract shown that meets the requirements of the statute of frauds; that the contract pleaded admittedly is insufficient to meet the statute of frauds, and under the decisions of the Supreme Court of the State of Washington such a contract is not subject to reformation.

The COURT.—I am at present inclined to the opinion that the entire issue in this case should have been disposed of upon this trial. However, upon the issue that is to be determined I am convinced in my own mind that if the warranty that is alleged is in this case it would prevent the Court from reformation.

We have here a lapse of four and a half years before this action was commenced. Prior to this action there was an action prosecuted in the state court, something over a year prior to the institution of this action. [66]

There is no clear and convincing evidence before the Court that there was any fraud committed when the letter of July 5, 1923, and the plat were sent by the secretary of the defendant company to the plaintiff. There is no evidence before the Court



which would lead the conscience of the Court to conclude mistake. All of the evidence before the Court is that it was not the intention to dispose of the logged-off lands. It was so testified to by Dollar, the secretary, by Vance, the president, by Abel, who had represented the company and who negotiated this sale, and in the inception of these negotiations the logged-off lands were not included, as well as some of the other property. And the logged-off lands and this other property was only included finally about three days prior to the consummation of the contract of sale. So that the letter of July 5th and the colored plat that was enclosed would seem to me to expose at least the condition of the mind of Dollar, the secretary, at the time of its transmission.

There is nothing before the Court prior to this date upon which to predicate any sort of an agreement. The conversation with the plaintiff and Dollar was not a contract, it could not have been enforced. The substance of this contract was within the statute of frauds of the state, and the first step to take it out of the statute of frauds was the letter of July 5th and the colored map, and from the date of the forwarding of this map until the filing of this case no step had been taken for reformation, or any charge made, as far as the Court knows, of any mistake.

Again, the Court cannot now make a contract for these parties. It would be to defeat the very purpose [67] of the statute of frauds of this state, and the laws of this state control the parties as to

this suit and limit and define their interest in the matter in issue. The petition for reformation will therefore be denied.

Upon the other phase of the case, the motion of the defendant to dismiss the action—

Mr. WALLACE.—(Interposing.) I want to be heard just a second on that.

The COURT.—(Continuing.) The Court must at this time deny that motion. It would be error, I am satisfied. There is such a serious question in my mind with relation to that motion to dismiss that I wish that you gentlemen would brief that proposition, and I will reserve ruling on that, as to whether or not the Court under the evidence in this case should dismiss the action. As presently advised I am inclined against it, but I can see many reasons why that should be done.

Mr. FALKNOR.—Would your Honor allow us fifteen days in which to submit a brief?

The COURT.—Yes; I will give you as much time as you want. I would like to have the question briefed because if the Court ought to dismiss it there is no use placing either the parties *of* the Court to the time and expense.

It was stipulated by counsel in open court that Carrie Gaunt, a witness who was present in court, if called to the stand would testify that the plaintiff was at the time of the commencement of this action and at all other times since up to the time of her death, was a resident and citizen of Multnomah County, State of Oregon, residing in Portland, Oregon. [68]

Plaintiff presents the above and foregoing, together with the amendments proposed by the defendant and allowed by the Court, as a statement of the evidence introduced at the trial of the above-entitled cause upon the question of plaintiff's right to reform the contract set forth in her complaint and shown by the evidence, and asks that the same be settled and allowed by the Court as true and correct, preserving her objections and exceptions to the amendments proposed by the defendant and allowed by the Court.

CHARLES A. WALLACE,

JOHN O. DAVIES,

Solicitors for Plaintiff.

The above and foregoing statement of the evidence in the above-entitled said cause is hereby settled and allowed as full, true and correct.

Dated this 8th day of November, 1928.

JEREMIAH NETERER,

District Judge.

[Endorsed]: Copy of within received Nov. 6, 1926.

POE, FALKNOR, FALKNOR & EMORY,

Attys. for —————.

[Endorsed]: Filed Nov. 7, 1928. [69]

PLAINTIFF'S EXHIBIT No. 1.

No. 596.

VANCE LUMBER COMPANY

Malone, Washington,

July 5, 1923.

Miss R. M. Gaunt,  
Tacoma, Wash.

Dear Madam:—

Referring to our former correspondence regarding a description and price on our holdings we beg to submit the following.

The property consists of saw mill with a capacity of 140,000 feet per eight hour day, blacksmith and machine shops. Planing mill with necessary dry kilns and dry lumber sheds. Two shingle mills with dry kilns. We have just recently completed the instalation of a 1000 K. W. General Electric Company turbine with necessary motors for supplying power for the above properties. Office and store building with stock of merchandise, hotel with accomodations for 100 people, 65 cottages for the accomodation of employees with families, pool hall and picture show house.

The logging equipment consists of one 100 ton Baldwin rod engine (new), two Heisler geared locomotives, 17 donkey engines with necessary lines, blocks etc., 2 steam shovels, 11 flat cars, 1 steel moving car, 3 oil tank cars, 42 connected logging trucks 6 balast cars, camp cars for two camp units and about 14 miles of standard guage railroad.

Standing timber which will cut 400 million, about 75 to 80% Fir, balance Hemlock, Spruce and Cedar. There is also about 500 million feet of standing timber available but not owned by the company.

We are holding this property for \$3,250,000.00 with commission to you of 2% and will sell on terms of one third cash and \$7.50 per thousand feet for all timber cut from our lands and \$2.50 per thousand feet for all timber cut from other lands with a minimum payment of \$500,000.00 per year, interest on deferred payments at 5%.

We are enclosing herewith plat showing our holdings together with holdings of other companies in this vicinity.

Trusting that this will supply you with the desired information, we are.

Yours very truly,

VANCE LUMBER COMPANY,

By H. B. DOLLAR. [70]

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PLAINTIFF'S EXHIBIT No. 3.

KNOW ALL MEN BY THESE PRESENTS: That VANCE LUMBER COMPANY, a corporation duly organized under the laws of the State of Washington, hereinafter called the vendor, and MASON COUNTY LOGGING COMPANY, a corporation duly organized under the laws of the State of Washington, and having its principal place of business in Grays Harbor County, State of Washington, hereinafter called the vendee, agree as follows: to-wit:

FIRST. The vendor agrees to sell, transfer, convey and assign to the vendee, and the vendee agrees to buy from the vendor, all and several the real estate, personal property, and mixed property hereinafter described, at the price and upon the following conditions, to-wit:

(A) The Southeast Quarter of the Northwest Quarter and the Northeast Quarter of the Southwest Quarter and Lots Five and Six, all in Section Six, Township Seventeen North, Range Four West, W. M.

The East Half of Section Six; North Half and the Southwest Quarter of Section Eight, all in Township Seventeen North, Range Four West, W. M.

The Southeast Quarter of Section Eight, Township Seventeen North, Range Four West, W. M.

Lots One and Two, Section Two, Township Seventeen North, Range Five West, W. M.

Lots One, Two, Three and Four of Section Four, Township Seventeen North, Range Five West, W. M., (excepting the strip reserved by August Hanny commencing at the Southeast Corner of Lot One, thence North forty rods; thence West eight rods; thence South forty rods; thence East eight rods to the place of beginning).

Southeast Quarter of Section Nine, Township Seventeen North, Range Five West, W. M.

The South Half of Section Ten, Township Seventeen North, Range Five West, W. M., excepting and reserving a tract known as Tract No. One of Garden Tracts,—

Beginning at a point on the south line of Section 10, which point is 30 feet easterly from the section corner common to Sections 9, 10, 15 and 16 T 17 N. R. 5 W. Wm; thence north a distance of 302.8 feet; thence N 55°-33' E a distance of 450 feet; thence S 34°-27' E a distance of 499 feet to a point which is 50 feet at right angles to the center line of the Vance Lumber Co's railroad track; thence S 75°-50' W parallel to and 50 feet distant from the center line of aforesaid track to the south line of Section 10; thence westerly along said section line 141 feet to place of beginning. Which

tract #1 contains 4.98 acres, more or less.

excepting and reserving also Tract No. Two of Garden Tracts,

Beginning at a point on the south line of Section 10, which point is 30 feet easterly from the section corner common to the sections 9, 10, 15 and 16, T 17 N. R. 5 W WM; thence North a distance of 302.8 feet; thence N 55°-33' E a distance of 450 feet which point is the point of beginning of tract #2; thence N 55°-33' E a distance of 400 feet; thence S 34°-27' E a



distance of 635 feet to a point which is 50 feet at right angles from the center line of the Vance Lumber Co's railroad track; thence [71] southwesterly along a line which is parallel to and 50 feet distant from the aforesaid track to the northerly line of tract #1; thence N  $34^{\circ}-27'$  W along northerly line of tract #1 a distance of 499 feet to place of beginning. Which tract #2 contains 5.20 acres, more or less.

excepting and reserving also Tract No. Three of Garden Tracts,—

Beginning at a point on the south line of Section 10, which point is 30 feet easterly from the section corner common to sections 9, 10, 15 and 16, T 17 N. R. 5 W. WM; thence north a distance of 302.8 feet; thence north  $55^{\circ}-33'$  E a distance of 850 feet to a point which is the point of beginning of Tract #3, thence N  $55^{\circ}-33'$  E a distance of 350 feet; thence S  $34^{\circ}-27'$  E a distance of 578 feet to a point which is 50 feet from and at right angles to the center line of the Vance Lumber Company's railroad track; thence on a curve to the right, having a radius of 523.14 feet and parallel to center line of aforesaid tract to the northerly line of tract #2 of garden tracts; thence north  $34^{\circ}-27'$  W along northerly line of Tract #2 a distance of 635 feet to place of beginning. Which tract contains 5.05 acres, more or less.

excepting and reserving also Tract No. Four of Garden Tracts,—

Beginning at a point on the south line of Section 10, which point is 30 feet easterly from the section corner common to sections 9, 10, 15 and 16 in T 17 N. R 5 W WM; thence North 302.8 feet; thence north  $55^{\circ}-33'$  E a distance of 1200 feet to a point which is the point of beginning of tract #4; thence N  $55^{\circ}-33'$  E a distance of 218 feet; thence N  $2^{\circ}-08'$  E a distance of 342 feet; thence S  $28^{\circ}-39.5'$  E to the beginning of a curve having a radius of 397.68 feet; thence on a curve to the right, having a radius of 397.68 feet for a distance of 277 feet to a tangent; thence at right angles to said tangent on a bearing of S  $78^{\circ}-44'$  E for a distance of 30 feet; thence S  $11^{\circ}-14'$  W parallel to and 50 feet from the center line of the Vance Lumber Co's railroad track, for a distance of 216.5 feet; thence on a curve to the right with a radius of 666.34 feet to the northerly line of Tract #3; thence N  $34^{\circ}-27'$  W along northerly line of tract #3 a distance of 578 feet to place of beginning. Which tract contains 4.14 acres, more or less.

Northeast Quarter of Section Ten and South Half of Northwest Quarter, and West Half of Southeast Quarter, and East Half of Southwest Quarter, and Northwest Quarter of Southwest Quarter of Section Eleven, also the timber upon the East Half of Southeast Quarter, Northeast Quarter

and North Half of Northwest Quarter, (subject to the terms and conditions contained in vendor's contract with Weyerhaeuser Timber Company) and Southwest Quarter of Southwest Quarter, all in Section Eleven, Township Seventeen North, Range Five West, W. M.

Northwest Quarter, Southeast Quarter of Northeast Quarter, Northeast Quarter of Southeast Quarter, and South Half of Southeast Quarter, all in Section Twelve, Township Seventeen North, Range Five West, W. M. [72]

North Half of Northeast Quarter, Southwest Quarter of Northeast Quarter, Northwest Quarter of Southeast Quarter, all in Section Twelve, Township Seventeen North, Range Five West, W. M.

Northwest Quarter of Southeast Quarter and that part of the Southwest Quarter of the Southeast Quarter lying North and West of a line drawn diagonally from the Northeast corner of said Forty acres to the Southwest corner of the same; also the standing timber on that part of said forty acre tract South and East of said diagonal line, all in Section Fifteen in Township Seventeen North, Range Five West, W. M.

West Half of Southeast Quarter, North Half of Northwest Quarter of Northwest Quarter, and South Half of Southwest Quarter of Northwest Quarter (less county road right of way), all in Section Sixteen, Township Seventeen North, Range Five West, W. M.

Southeast Quarter of Southeast Quarter of Section Sixteen, Township Seventeen North, Range Five West, W. M.

Northwest Quarter of Southwest Quarter of Section Sixteen, Township 17 North, Range Five West, W. M., except the old Mox-Chehalis county road and the new Mox-Chehalis county road, and that part previously deeded to J. T. McKay for a barn, being about Two Hundred feet square in the Southwest corner of said Forty Acre tract; excepting also that part thereof heretofore deeded by vendor to School District No. 105.

Southwest Quarter of Southwest Quarter of Section Sixteen, Township Seventeen North, Range Five West, W. M., excepting the right of way now owned by Northern Pacific Railway Company, and county road, and excepting also the tract of land South and West of said railroad right of way known as Tax No. Six.

Southeast Quarter of Southwest Quarter and Northeast Quarter of Southwest Quarter of Section Sixteen, Township Seventeen North, Range Five West, W. M., excepting that part thereof heretofore deeded by vendor to said School District No. 105; excepting also the new Mox-Chehalis county road.

South Half of Southwest Quarter of Southeast Quarter of Section Seventeen in Township Seventeen North, Range Five West, W. M., and easement

of passage over Daniel McKay private roadway, which roadway is twelve feet wide and extends across the North Half of Southwest Quarter of Southeast Quarter, and North Half of Southeast Quarter, all in Section Seventeen, Township Seventeen North, Range Five West, W. M.

That portion of Northeast Quarter of the Southeast Quarter lying North and East of Northern Pacific Railway Company right of way and less county roads; also excepting Tax No. 1, being a strip of land lying South of county road to mill; excepting also tract of land described as follows: Beginning at the South Line of Southeast Quarter of Northeast Quarter of said Section Seventeen, Township Seventeen North, Range Five West W. M., North and East of county road, thence Southeasterly Forty-three degrees Forty-eight minutes East along county road two hundred and nineteen feet; thence North eighty degrees thirty-two minutes East two hundred and fifty-eight and six-tenths feet; thence North twenty-nine degrees twenty minutes East one hundred and sixty-five feet to the South line of said Forty acre tract.

Southwest Quarter of Northeast Quarter, Northwest Quarter of Southeast Quarter of Section Twenty One, Township Seventeen North, Range Five West, W. M., and that part of Lot Five lying North and East of county road (excepting the right and easement, [73] if any, of Northern Pacific Railway Company to obtain water supply and conduct the same across said land).

Merchantable timber standing, lying and being upon North Half of Northwest Quarter, Southwest Quarter of Northwest Quarter, and Northwest Quarter of Southwest Quarter, all in Section Twenty-two, Township Seventeen North, Range Five West, W. M. (subject to the conditions contained in vendor's deed from H. B. Marcy and E. Belle Marcy).

All the standing and fallen merchantable timber upon the West Half of Southwest Quarter of Section Twenty, Township Eighteen North, Range Four West, W. M., (subject to the conditions contained in title deed of vendor from State of Washington.)

South Half of Northwest Quarter, Northeast Quarter of Northwest Quarter, and Northwest Quarter of Northeast Quarter, all in Section Thirty-four, Township Eighteen North, Range Four West, W. M.

Southwest Quarter of Section Thirty-four, Township Eighteen North, Range Four West, W. M.

All of the timber upon Section Twenty-five, Township Eighteen North, Range Five West, W. M. (subject to the conditions contained in vendor's deed and contract from Port Blakely Mill Company).

The interest of the vendor in the East forty rods of Northeast Quarter of Northeast Quarter, all in



Section Twenty-six, Township Eighteen North, Range Five West W. M., (which is subject, however, to the right of J. M. Main to acquire the same upon the conditions that the vendor's shingle mill will be allowed to remain thereon for such length of time as the vendor may determine, subject to the conditions that the owner of the shingle mill pay the taxes.)

Southeast Quarter of Section Thirty-two, Township Eighteen North, Range Five West, W. M.

Southwest Quarter, and Northeast Quarter of South-east Quarter of Section Thirty-four, Township Eighteen North, Range Five West, W. M.

The logging railroad of the vendor, commencing at its junction with the Northern Pacific Railway at Malone, in Section Seventeen, Township Seventeen North, Range Five West, W. M., thence across Section Sixteen, Section Fifteen, Section Ten, Section Three, Section Two, and Section One, all in said township; thence across Section Thirty six in Township Eighteen North, Range Five West, Wm., thence across Section Thirty-one and Section Thirty in Township Eighteen North, Range Four West, W. M., including therein all easements for grade and roadbed; also the rails, bridges, angle-bars, switch-materials, frogs, and all spurs, sidings, and branches, said railroad in part extending across the lands agreed to be conveyed as



above described, and also including the following; Beginning at the point which is the section corner common to Section Nine, Ten, Fifteen and Sixteen in Township Seventeen North, Range Five West, W. M., and thence South along the West line of Section Fifteen for a distance of Three Hundred and Fourteen and nine-tenths feet; thence North Thirty-four degrees Thirty-one minutes for a distance of Thirty-three and seven-tenths feet, thence on a curve to the right, said curve having a radius of Six Hundred and Eighty-six and three-tenths feet, for a distance of Four Hundred and ninety-two and six-tenths feet; thence on the tangent of said curve which bears North Seventy-five degrees Forty-seven minutes East, for a distance of one hundred sixty-nine and eight-tenths feet to a point on the North line of Section fifteen, thence [74] South eighty-seven degrees four minutes West along the north line of section fifteen for a distance of Five Hundred and Eighty and six-tenths feet to place of beginning; also including the tract of land commencing at a point on the section line one hundred and six feet West of the Northeast corner of Section Sixteen, Township Seventeen North, Range Five West, W. M., thence West along the North line of said Section to a point one hundred and sixty-four feet from the point of beginning; thence Southeasterly Eighteen degrees South ten degrees East to a point three hundred and sixty-one feet from Section line at point of intersection

with said railroad right of way; thence Northeasterly along said right of way three hundred and forty feet to point of beginning; also beginning at the Northeast corner of Section Sixteen, Township Seventeen North, Range Five West, W. M., thence South on Section line between Sections Fifteen and Sixteen, variation Twenty-five degrees Thirty minutes East six hundred and sixty-six and two-tenths feet; thence West one hundred and ninety-five feet to intersection of the East line of said railroad; thence Northwesterly on said railroad right of way line to its intersection of the North line of said section sixteen; thence East forty-five and two tenths feet to the place of beginning; also a strip of land for railway right of way sixty feet wide across the North thirty acres of Northeast Quarter of Northeast Quarter of said Section Sixteen, the same being thirty feet on each side of said railroad as laid out (subject to leasehold agreement contained in vendor's title deed); also a strip of land sixty feet wide across the South ten acres of the Northeast Quarter of Northeast Quarter of said Section Sixteen, Township Seventeen North, Range Five West, W. M., the same being thirty feet on each side of said railroad as laid out.

Also that part of Southwest Quarter of Northeast Quarter of Section Sixteen, Township Seventeen North, Range Five West, W. M., lying south and East of the Mox-Chehalis county road.

Also a strip of land sixty feet wide across the Southeast Quarter of Northeast Quarter of said

Section Sixteen, Township Seventeen North, Range Five West, W. M., the same being thirty feet on each side of the said railroad as now laid out.

(c) The said lands and said railroad to be conveyed by the vendor subject to all the conditions, exceptions and reservations contained in the vendor's title; also excepting all property, estates and interest severally excepted and reserved by the patents and deeds in the several chains of title.

(d) Also all buildings and fixtures upon the said lands, and also the following described personal property: Saw-mill building, power plant, machine shop, machinery, supplies, shingle mills and all machinery therein, shingle mill dry kilns, planing mill and machinery and dry kilns, hotel and equipment, store and office building, stock of merchandise and office equipment, pool hall and picture-show house and equipment; sixteen logging engines with all lines, blocks, and equipment; two steam shovels, one 63-ton Heisler geared locomotive, one 50-ton Heisler geared locomotive, one Baldwin locomotive class 12-30 $\frac{1}{4}$  E-88 No. 55804, all logging trucks, about forty-one in number, three wood racks, eight flat cars, six gravel cars, one steel moving car, three oil-tank-cars, camp cars and equipment, all rails and supplies therewith, stock of lumber on hand on January 1, 1924; all logs in pond and in woods and all other personal property owned and used by the vendor at Malone, Washington, in its logging and lumbering operations, excepting and reserving, however, its books of entry and account, its office files, accounts receivable and bills receiv-

able and all lumber and logs shipped or billed prior to January 1, 1924. [75]

(E) The vendor agrees to assign to the vendee its right, title, estate and interest in that certain contract made January 1, 1923, between Hewitt Land Company as vendor and Vance Lumber Company as vendee for the purchase by Vance Lumber Company of Section twenty-nine, Section Thirty-one, and Southwest Quarter of Section Thirty-two all in Township Eighteen North, Range Four West, W. M.

Upon full payments having been made by the vendee of the purchase price hereinafter set out, the vendor agrees that it will make or cause to be made to the vendee herein a deed to said lands, subject only to the exceptions, reservations, and conditions contained in said contract.

The vendor also agrees to assign to the vendee its right, title, estate and interest in that certain contract made April 12, 1912, between Milwaukee Land Company as vendor and Vance Lumber Company as vendee, for the purchase by Vance Lumber Company of Lot One, or the Northeast Quarter of the Northeast Quarter, Lot Two, or the Northwest Quarter of the Northeast Quarter, and the South Half of the Northeast Quarter of Section Two, Township Seventeen North, Range Four West, W. M., and

The Northeast Quarter and the North Half of the Southeast Quarter of Section Twenty; the Northwest Quarter and the Southwest Quarter of Section Twenty-two; and the Southeast Quarter of

Section Twenty-six; the Northeast Quarter of Section Twenty-eight, the east half, the east half of the Northwest Quarter, Lot One or the Northwest Quarter of the Northwest Quarter, Lot Two, or the Southwest Quarter of the Northwest Quarter, the East Half of the Southwest Quarter, Lot Three, or the Northwest Quarter of the Southwest Quarter, Lot Four, or the Southwest Quarter of the Southwest Quarter of Section Thirty, the Northeast Quarter, the Northwest Quarter, and the Southeast Quarter of Section Thirty-two, all in Township Eighteen North, Range Four West, W. M.

Upon full payment having been made by the vendee of the purchase price hereinafter set out, the vendor agrees that it will make or cause to be made to the vendee herein a deed to said lands, subject only to the exceptions, reservations and conditions contained in said contract.

SECOND. In consideration whereof, and in consideration of the several terms and conditions of this contract, the vendee promises to pay the vendor the sum of Two Million Five Hundred Thousand Dollars as follows, to-wit: Five Hundred Thousand Dollars in cash on the signing of this agreement, the receipt of which is hereby acknowledged, and Two Hundred and Fifty Thousand Dollars semi-annually, commencing July 1st, 1924, with interest at the rate of five per cent per annum from January 1st, 1924, interest payable semi-annually, and to be evidenced by eight promissory notes, each in the sum of Two Hundred and Fifty Thousand Dollars numbered consecutively from one to eight,

each inclusive, the amount and date of maturity of each of said notes being as follows:

- \$250,000 on or before the first day of July, 1924;
- \$250,000 on or before the first day of January, 1925;
- \$250,000 on or before the first day of July, 1925;
- \$250,000 on or before the first day of January, 1926;
- \$250,000 on or before the first day of July, 1926;
- \$250,000 on or before the first day of January, 1927;
- \$250,000 on or before the first day of July, 1927;
- \$250,000 on or before the first day of January, 1928;

[76]

said notes to contain the provision that the vendee may pay not less than Fifty Thousand Dollars upon the note next maturing at any time prior to the due date, said notes to be payable to the vendor or his order at the Bank of Elma, Elma, Washington, and all payments made shall stop interest upon amount so paid.

THIRD. The vendee shall be put into possession of all of the property agreed to be conveyed by this contract as of date January 1st, 1924, and shall have possession and right of possession thereof during the term of this contract.

FOURTH. The vendee is authorized to use and operate all of said property in the usual manner. It is authorized to cut and remove the timber upon the vendor's said lands, including the lands covered by Hewitt Land Company contract and by Milwaukee Land Company contract, as long as the vendee shall, and it agrees to, on or before the 10th day of each calendar month make a written report in triplicate to the vendor, which report shall be a



complete and correct deck scale statement (or if said logs are shipped by rail, then railway scale statement), of all timber cut from said lands, specifying separately the lands covered by Hewitt Land Company contract, from which the timber is cut during the preceding calendar month, and accompanying such report with a cash payment at the rate of \$7.50 per thousand feet board measure log deck scale for the total amount of timber shown by said report to have been cut during the preceding month. All payments on account of timber cut shall be applied by the vendor, and endorsed upon the note or notes next falling due, and credited upon this contract. If the vendee shall prepay upon said installment notes an amount equal to the amount to be paid by it in any month for timber cut during the preceding month, then it need not pay said amount for the timber cut during said preceding month. Should the vendee, for any reason, fail to furnish statement and make payment within the time herein provided, to-wit, by the 10th day of each calendar month for the timber cut during the preceding month, it shall have no right to cut timber under this contract until said default has been cured; but this provision is not intended to deprive the vendor of the remedies of forfeiture, rescission, or other remedies provided in this contract or provided by law. In the event that the vendor shall not be satisfied with the scale of logs cut as reported by the vendee from month to month, then the vendor shall be entitled to select and appoint a scaler, to scale said logs in cooperation with



the vendee's scaler, and if said two scalers do not agree in their scale, then they, the said two scalers, shall appoint a third scaler, who from that time on shall scale all logs thereafter cut under this contract by the vendee, and the scale of said third scaler shall be final, binding, and conclusive upon vendor and vendee, and payments shall be made accordingly by the vendee. The vendee shall pay the cost of employment of said third scaler.

FIFTH. It is agreed that whereas the parties contemplate that the property hereby agreed to be sold has additional value because of the proximity and contiguity of timbered lands owned by others, in such position that the same should be, and could be profitably logged in connection with the vendee's operations under this contract, the vendee shall have the right to purchase any of such timbered lands and cut and remove the timber therefrom, with the logging equipment and over the railroad mentioned in this contract. As to all such additional timber, as and when cut and removed, the vendee agrees to, on or before the 10th day of each calendar month, make a written report in triplicate to the vendor, which report shall be a complete and correct deck scale statement of all timber cut from said lands, specifying the lands from which the timber is cut during the preceding calendar month, and accompany [77] such report with a cash payment at the rate of \$2.50 per thousand feet board measure log deck scale for the total amount of timber shown by said report to have been cut during the preced-

ing month, which shall be credited upon the notes and applied on the purchase price.

SIXTH. In its possession and operation of said property the vendee agrees to exercise due care not to deplete the property except as in this contract provided, and to keep the operating part of said property in good repair, and not, to allow any part thereof to be or become out of repair or depreciated in value further than that which results from usual use, wear and tear of the same, but will at all times keep all of said property in as good a state of repair as the same is now in, except usual wear and tear thereof.

SEVENTH. The vendee agrees to protect, and hold harmless, and indemnify the vendor from and against all claims for damages to person or property which may arise during the term of this contract from the possession, use and operation thereof by the vendee, or by any third person.

EIGHTH. In the conduct of its logging operations the vendee shall not allow timber to be wasted; it shall log the land clean as it goes and carry on its operations with due regard to the conservation of the property and protection from fire hazard.

NINTH. The vendee agrees that it will not suffer or permit any liens for labor, material, or otherwise, other than for taxes, to be placed upon any of the property embraced in this contract. Nothing contained in this agreement shall be construed to render the vendor liable for any debt or obligation incurred in or about the conduct of operations contemplated by this agreement.

TENTH. The vendee agrees to keep insured against fire, at full coverage, the said saw mill, shingle mill, stock of lumber, mill machinery, office building, store, dwelling houses and merchandise; said insurance shall be carried in companies acceptable to the vendor and the policies to be made payable to the vendor as its interests may appear. In event of recovery upon said insurance policies, or any of them, the amounts collected shall be credited upon the purchase price, and on the installment thereof last falling due.

ELEVENTH. The vendor agrees to pay all taxes, both real and personal, upon or against said property for the year 1922 and prior years. The vendee agrees to pay all taxes and assessments, including fire patrol assessments, levied against or on account of said property, including personal property, for the year 1923 and for subsequent years, at least fifteen days before such taxes or assessments shall become delinquent, and immediately thereafter furnish the vendor with proper receipts showing such payment.

TWELFTH. The vendee agrees to keep at its office at Malone, Washington, complete and accurate books of account of all matters pertaining to this contract, and accurate log scales of all logs cut and removed from the vendor's said lands, and separately keep accurate log scales of all logs cut from Hewitt Land Company's lands and from Milwaukee Land Company's lands, and from other lands.

The vendor shall have the right at any and all times during business hours to examine the books

of account kept by the vendee covering all of its said operations, and shall have full access to all the premises and property for the purpose of inspection.

The vendee agrees that on or before the first day of March in each year, during the term of this contract, to render a complete statement of its financial condition, and its operations for the preceding calendar year, to the vendor, which statement shall be received and kept in confidence by the vendor. [78]

**THIRTEENTH.** It is agreed that this contract shall be effective as of date January 1, 1924. The vendee agrees to accept and pay for all merchandise and supplies ordered or contracted for by the vendor during 1923 and not delivered until 1924. All expenses of operation and care of said property, cost of materials, supplies, merchandise, and labor furnished or received during the year 1924 shall be for the account and at the expense of the vendee. The vendee agrees to pay to the vendor the *pro rata* cost of all policies of fire insurance procured by the vendor before the outstanding on January 1st, 1924.

All accounts receivable and bills receivable owing to Vance Lumber Company when this contract takes effect, including all lumber shipped or billed up to that time, and all unsettled credits, are reserved to the vendor and do not pass to the vendee under this contract of sale. The vendor's books of account and office files of its business are likewise reserved to the vendor and are not to pass under this contract of sale.

FOURTEENTH. The vendor agrees to correct any substantial defects in the title of the several tracts of land to be conveyed under this contract and by its deed to warrant the title thereto under the vendee. And the vendee shall and does accept the title to said property at this time, and hereby waives any right or remedy of rescission and/or forfeiture on account of the condition of the title. The vendee does, and shall depend upon the examination made by it of said property and of the title thereto, and has not depended upon any statement, representation or opinion made by the vendor, its agents or attorney.

FIFTEENTH. It is agreed that the vendor shall and it does reserve unto itself the title of all the property agreed to be conveyed by it to the vendee, and that the vendor shall retain said title until by full payment of the purchase price, both principal and interest, the vendee shall be entitled to receive title, provided that when payments have been made hereunder until there remains no more unpaid than one million dollars of the principal of said notes the vendee may at its option execute a mortgage to the vendor upon the property aforementioned to secure payment of the balance then unpaid, and upon the delivery of such mortgage to the Bank of Elma for the party of the first part all deeds, bills of sale and other documents to vest title to all of said property in the vendee shall be by said Bank delivered to the vendee.

SIXTEENTH. The vendee shall have no right to sell, assign, transfer, mortgage, or otherwise en-

cumber this contract nor any right or interest therein without the written consent of the vendor first obtained. In the event of sale, assignment, transfer, mortgage, or other encumbrance, the vendee shall remain liable under this contract, and the person to whom such sale, assignment or transfer is made shall likewise be liable thereon.

SEVENTEENTH. The Vendor agrees that whereas it is indebted at this time upon Hewitt Land Company contract of purchase in the principal sum of \$275,000 (interest to January 1, 1924, having been paid by it) and is indebted upon Milwaukee Land Company contract of purchase in the principal sum of \$50,000, with interest in the sum of \$542.47, (the same being the interest to June 11, 1923, on which date the vendor tendered to Milwaukee Land Company the principal and interest), the vendee is given the option to pay said [79] Hewitt Land Company, and said Milwaukee Land Company the full amount owing each respectively, and in the event of payment by vendee to Hewitt Land Company and Milwaukee Land Company it shall furnish the vendor with written evidence of said payment or payments, and the amount thereof shall be credited as of the date of such furnishing upon the note or notes last falling due, and on the last installment of the purchase price.

EIGHTEENTH. The right and power of re-entry reserved to the vendor is intended to be in addition to all other rights and remedies available at law or in equity for the protection and security of the vendor, and the conservation of the property



covered by this contract. The vendor at its discretion, in the event of any default by the vendee, may pursue any remedies available at law or in equity.

Any failure of the vendor to insist upon strict performance of any of the conditions or limitations herein contained, or to exercise any right conferred in any one or more instances, shall not be construed as a waiver or relinquishment for the future of any such condition, limitation of right, but the same shall be and remain at all times in full force and effect during the life of this contract.

NINETEENTH. Should the Chicago, Milwaukee & St. Paul Railway Company, or any of its subsidiary companies, build an extension into the territory and be in position to transport shipments of lumber or products manufactured from the timber taken from the lands covered by the Milwaukee Land Company contract, the vendee agrees that it will offer to said railway company, for transportation over its lines, all shipments which it can handle at as low rates as any competing transportation line.

TWENTIETH. All unfilled orders for lumber and shingles on the books of the vendor on January 1st, 1924, shall be taken over and filled by the vendee at the order prices and upon the terms shown by said orders. A list of said orders and the files thereof is delivered contemporaneously with this contract.

TWENTY-FIRST. The vendee has been furnished with a true copy of Hewitt Land Company



contract and of Milwaukee Land Company Contract, and in its logging and lumbering operations shall strictly keep and perform each of the provisions and requirements of each of said contracts, but this provision is not intended to allow or require the vendee to make payments on account of timber cut direct to either Hewitt Land Company or Milwaukee Land Company. Should the vendor fail to make such payment or payments to Hewitt Land Company by the 15th day of the month, as required by the contract with that company, then the vendee may pay the same direct to Hewitt Land Company, and such payment shall be a credit, and credited on the note next falling due.

TWENTY-SECOND. The vendee shall keep said timber on said lands, and that which has been cut and removed from said lands, free from all labor liens, mortgages, or any other liens or encumbrances, until the payments of said \$7.50 per thousand feet for said timber cut during the said next preceding month have been made. The title to, and the right of possession of, all such timber, whether cut or uncut, and all lumber, shingles, or other products of such timber manufactured therefrom, shall be and remain with vendor until the monthly payments of said purchase price have been paid to vendor as above set forth. [80]

TWENTY-THIRD. The vendor agrees to pay on or before the due date all amounts to be paid by it under the contracts with Hewitt Land Company and Milwaukee Land Company, and agrees to hold the vendee harmless in respect thereto, upon

the condition, however, that the vendee shall punctually make the statements and payments required of it from month to month of timber cut on the lands covered by the several said contracts.

TWENTY-FOURTH. The parties agree that time shall be and is hereby made of the essence of this agreement and of each and every term and condition thereof to be kept and performed by the vendee. Should the vendee, for any cause, fail to furnish statements of timber cut and make payment accordingly within the time specified in this contract, then its right to cut timber shall end without notice, and it shall immediately cease cutting and removing the timber from the lands to be conveyed under this contract.

If the vendee shall fail to make payments of principal and interest at the time and place specified in this contract or within sixty days thereafter, then, at its option, the vendor shall have the right to declare this contract null and void, and repossess itself of all the property thereto agreed to be conveyed and of all extensions, additions and substitutions thereto, and in that event all rights granted to the vendee hereby shall cease and terminate and all sums of money paid and all acts done in the betterment, improvement, replacement of or additions to said property, or any part thereof, shall be, become, and remain the property of the vendor, and the vendee shall, and it agrees to surrender and yield up all thereof to the vendor, and all payments on account of purchase price, whether principal or interest, and all other payments made by the

vendee, shall be retained by the vendor as liquidated damages.

TWENTY-FIFTH. The vendor assigns to the vendee its contract with Northern Pacific Railway Company for the maintenance and operation of its spur track in connection with the main track of the Grays Harbor branch of Northern Pacific Railway Company. The vendee takes over said contract, and while said contract is in force agrees to be bound by its terms and saves the vendor harmless in respect thereto.

The vendor hereby assigns to the vendee its average demurrage contract with Northern Pacific Railway Company of date March 2nd, 1920. During the life of said contract the vendee agrees to be bound by its terms and to save the vendor harmless in respect thereto.

TWENTY-SIXTH. It is agreed that in the event of fire in the mills or timber, or of floods, strikes of employees, or for other causes beyond the control of the vendee, said party shall be unable to continue its logging operations or the operation of said mills, then the time for the making of the next maturing payments herein provided for shall be suspended and extended for a length of time equal to the time such operations shall be necessarily suspended, such suspension and extension of time, however, to not exceed at any one time more than three months. This provision for extension shall not be applicable unless the vendee shall make written request to the vendor for such extension within thirty days after the period of shut-down.

TWENTY-SEVENTH. The vendor agrees that it shall and will at this time place in escrow at and with the Bank of Elma, Elma, Washington, the deed, bill of sale, and policies of insurance outstanding upon said property on January 1, 1924. Said deed and bill of sale shall be held by the Bank of Elma for delivery to the vendee upon the payment by it of the full amount of the [81] *of the* purchase price, principal, and interest, or the giving of a mortgage as above provided. If the vendee shall fail to pay any part of the purchase price as in this contract and in said notes provided, and said default shall continue for sixty days, then the Bank of Elma shall, and it is hereby authorized to, return, surrender, and deliver to the vendor said deed and bill of sale, and upon such delivery the vendee shall, and it agrees to, surrender and yield up all of the property covered by this contract, real, personal and mixed, and thereby, and by said default, all rights and remedies of the vendee shall cease and terminate. In the event of any forfeiture or rescission by the vendor at law or in equity of this contract, all payments on account of purchase price shall be retained by the vendor as liquidated damages.

TWENTY-EIGHTH. The real estate agreed to be conveyed, insofar as it applies to Section One, Two and Three of Township Seventeen, Range Five West W. M., is intended to convey the easement acquired from Weyerhaeuser Timber Company by the Vendor, and insofar as it applies to Section

Thirty-six, Township Eighteen, North Range Five West, W. M., it is intended to convey the easement acquired from the State of Washington by the vendor, and to convey no greater interest than said easements.

IN WITNESS WHEREOF, the parties hereto have executed this contract by their proper officers thereunto duly authorized, this 9th day of January, 1924.

VANCE LUMBER COMPANY,  
By (Signed) J. A. VANCE,  
President.

Attest: (Signed) H. B. DOLLAR,  
Secretary.

MASON COUNTY LOGGING COMPANY,  
By (Signed) THOMAS BORDEAUX,  
President.

Attest: WILFRED BORDEAUX,  
Secretary. [82]

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PLAINTIFF'S EXHIBIT No. 4.

Q-I

VANCE LUMBER COMPANY.

Malone, Washington.

July 5th, 1923.

This property consists of a sawmill, with a capacity of 140,000 feet per eight-hour day, blacksmith and machine shops. Planing-mill with necessary dry kilns and dry lumber sheds. Two shingle-mills with dry kilns. We have just recently com-

pleted the installation of a 1000 K. W. General Electric Company turbine, with necessary motors for supplying power for the above properties.

Office and store building with stock of merchandise, hotel with accommodations for 100 people, 65 cottages for the accommodations of employees with families, pool-hall and picture-show house.

The logging equipment consists of one 100-ton Baldwin rod engine (new), two Heisler geared locomotives, 17 donkey engines with necessary lines, blocks, etc., two steam shovels, eleven (11) flat cars, one (1) steel moving car, three (3) oil tank cars, forty-two (42) connected logging trucks, six (6) ballast cars, camp cars for two (2) camp units and about fourteen (14) miles of standard guage railroad.

Standing timber which will cut 400,000,000 feet, about 75 to 80% is Fir, balance Spruce, Hemlock and Cedar. There is also, about 500,000,000 feet of standing timber available but not owned by the Company.

Following is legal description of Vance Lumber Company holdings in Grays Harbor and Thurston Counties, Washington:—

NE.1/4 of .....	Section 2(
E.1/2 & N.1/2 of SW.1/4, S.1/2 of NW.1/4.....	Section 6(Twp. 17 North,
All of .....	Section 8(Range 4, West.
E.1/2, NW.1/4 of .....	Section 12(
S.1/2, NE. 1/4, E.1/2 of NW.1/4.....	Section 11(
W.1/2 of S.E.1/4 .....	Section 15(Twp. 17 North,
W.1/2 of SW.1/4, W.1/2 of NW.1/2, NE.1/4 of NW.1/4.....	Section 22(Range 5, West.
SW.1/4 of NE.1/4, NE.1/4 of SE.1/4.....	Section 21(
NE.1/4 of NE.1/4 .....	Section 28(
NE.1/4, N.1/2 of SE.1/4, W.1/2 of SW.1/4.....	Section 20(
W.1/2 .....	Section 22(Twp. 18 North,
SE.1/4 .....	Section 26(Range 4 West.
NE.1/4 .....	Section 28(
All of Sections 29-30-31-32 .....	(
NW.1/4 of NE.1/4, E.1/2 of NW.1/4, SW.1/2 of NW.1/4,	
SW.1/4 .....	Section 34(
All of Sections 25-36 .....	(Twp. 18 North,
N.1/2, SE.1/4, N.1/2 of SW.1/2.....	Section 35(Range 5 West.



Also:—Land in Sections 10-16-17, Twp. 17 North, Range 5 West, where the mill, office buildings, hotel, cottages and other buildings in the town of Malone, Washington, *as situated.*

All the above property is situated in Grays Harbor and Thurston Counties, State of Washington.  
[83]

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PLAINTIFF'S EXHIBIT No. 5.

No. 596.

VANCE LUMBER COMPANY,

Manufacturers,

LUMBER AND SHINGLES.

Malone, Washington.

August 15, 1923.

Miss R. M. Gaunt,

Box 1426,

Tacoma, Washington.

Dear Miss Gaunt:

As we are giving an option on the property that we offered for sale, please do not do anything further with this until you hear from us again.

Yours truly,

VANCE LUMBER COMPANY.

H. B. DOLLAR.

HBD:C [84]

## PLAINTIFF'S EXHIBIT No. 6.

No. 596

Montesano, Washington,

August 28th, 1923.

Mason County Logging Co.,  
Bordeaux, Washington.

Dear Sirs:

The Vance Lumber Company herewith gives you an option, to be exercised within sixty (60) days from this date, to purchase for the price of \$3,250,000.00, its entire lumbering and logging properties, including its saw mill, planing mill, shingle mills and all property appurtenant thereto; its office and store buildings, hotel, all of its cottages, pool hall, picture show house, including all of its timber properties, and all its logging railroad and all properties used in the operation thereof and in its logging operations. All of this property is located at and near Malone, in Grays Harbor County, part of the timber being in Thurston County.

The accounts receivable, bills receivable and books of account are not included in our offer, nor any timber or lumber which up to the time of the exercise of the option is either removed from the land or shipped away from the mill.

We would, however, expect you to fill at the order price any unfilled or partially filled orders in existence at the time of exercising the option.

There are some matters of title yet to be perfected by the Milwaukee Land Company and some

of our lands we have sold upon contract and would expect that you would take these lands [85]

August 28th, 1923.

Mason County Logging Co.—No. 2.

subject to these contracts, and of course receive the balance of the unpaid purchase price.

Also there are two or three contracts for easements which, in the event of sale to you, would have to be taken into consideration.

Of the said price, \$1,000,000. is to be cash payment; balance on terms hereinafter to be agreed upon.

There is herewith sent you a list of our timber lands headed "TIMBER LANDS." There is also sent you a list of all of our lands covered by the option which includes the timber lands and the logged off lands. This is entitled "TIMBER LANDS AND LOGGED OFF LANDS."

Yours very truly,

VANCE LUMBER CO.,

By J. A. VANCE, Pres.

Encl. [86]

## PLAINTIFF'S EXHIBIT No. 7.

No. 596.

VANCE LUMBER CO.

vs.

MALONE, WN.

J. A. Vance,	M. A. Vance,	H. B. Dollar,
Pres. & Mgr.	Vice-Pres.	Secy.
		M.

VANCE LUMBER COMPANY,  
Manufacturers.

LUMBER AND SHINGLES

Malone, Washington.

Long Distance Phone,

Elma, Main 822

May 9, 1925.

(Seal)

Mr. R. M. Gaunt,  
Tacoma, Wash.

Dear Sir:

Referring to your letter of the 7th to Mr. Vance, Mr. Vance has been sick for the last few weeks and intends leaving for Seattle to-day, to be gone for a week or so, but should you desire to bring this party down here to look over the plant, the writer will be here at that time and will be very pleased to show him around.

Your truly,

VANCE LUMBER COMPANY,

By H. B. DOLLAR.

PLAINTIFF'S EXHIBIT No. 8.

No. 596.

Lock Box 1426.  
Tacoma, Washington.

August 29th, 1923.

Mr. H. B. Dollar,  
Malone, Washington.

Dear Sir:—

I received your letter which was written the 15th inst., where you requested me not to do anything further until I heard from you.

I have not written to Mr. Reed since that time, but I am interested to know if he or his associates are the parties to whom you are giving an option on your timber? Or anyone to whom Mr. I. A. Wilson submitted the property?

I have not told anyone about submitting the property to Mr. Reed, as this is my deal only, this time. And I do not expect to tell anyone about it at any time.

If he or his associates are not the parties who are taking the option, then I would be a liberty to offer them another tract of timber.

Thanking you in advance for an expression concerning this, which will be greatly appreciated by me.

Yours very truly,

RMG:C. [88]

## PLAINTIFF'S EXHIBIT No. 9.

No. 596.

Lock Box 1426.  
Tacoma, Washington.

August 9th, 1923.

Mr. H. B. Dollar,  
Malone, Washington.

Dear Sir:

I have this day submitted your timber and mill property at Malone, to Mark E. Reed of the Simpson Logging Company, and his associates, for their consideration.

As you do not want any undue publicity, I requested them to keep the matter quiet. They will respect Mr. Vance' wishes in this matter.

He wrote me that they would give this proposition their consideration if I would send plat and data which you gave *me* to me. Owing to the financial responsibility of these parties whom I know are amply able to handle a property like yours, I trust this will meet with your approval.

The former agreement with you concerning a commission for me and my associates, will be all right for this time also.

Yours very truly,

RMG:C. [89]

PLAINTIFF'S EXHIBIT No. 10.

No. 596

Lock Box 1426,  
Tacoma, Washington.

January 17th, 1924.

Mr. H. B. Dollar,  
Malone, Washington.

Dear Sir:—

I have read the announcement of the sale of the Vance Lumber Company's timber and holdings in Grays Harbor County to the Mason Logging Company, which is one of the Company's to whom I expected the maps and information concerning the Vance property, would be submitted by Mr. Mark E. Reed, for their consideration.

Upon completion of the sale I hope to be substantially remembered by the two (2%) per cent commission on the sale price, which you promised me.

Congratulating you upon the successful deal, and hoping to hear from you soon,

Yours sincerely,

R. M. GAUNT.

RMG:C. [90]



## PLAINTIFF'S EXHIBIT No. 11.

No. 596

VANCE LUMBER CO.

vs.

MALONE, WN.

J. A. Vance,	M. A. Vance	H. B. Dollar,
Pres. & Mgr.	Vice-Pres.	Sec'y.

VANCE LUMBER COMPANY,

Manufacturers

LUMBER AND SHINGLES.

Malone, Washington.

Long Distance Phone,  
Elma, Main 822  
September 3, 1923.

Miss R. M. Gaunt,  
Tacoma, Wash.

Dear Miss Gaunt:

Referring to your letter of August 29th wish to advise that Mr. Reed is not the party to whom we have given the option. As soon as any action is taken on the option we will be very tglad to advise you.

Yours very truly,  
VANCE LUMBER COMPANY.

By H. B. DOLLAR. [91]

PLAINTIFF'S EXHIBIT No. 12.

No. 596

VANCE LUMBER COMPANY.

Malone, Washington.

July 11, 1923.

Miss R. M. Gaunt,  
Tacoma, Wash.

Dear Madam:

The writer was in Aberdeen yesterday and learned that our property here was being offered on the street for sale.

We were very much surprised to hear this as when we gave you the information regarding our holdings we were led to believe that you had a party who was interested in a proposition of this kind and did not give you information expecting that it would be offered in this way.

We would thank you to let us hear from you regarding this.

Yours very truly,

VANCE LUMBER CO.,  
By H. B. DOLLAR. [92]

## PLAINTIFF'S EXHIBIT No. 13.

No. 596.

Lock Box 1426,  
Tacoma, Washington.

December 17th, 1923.

Mr. H. B. Dollar,  
Malone, Washington.

Dear Sir:—

I have been desirous to know how the timber deal is progressing. I must tell you something that I have learned from a timber dealer friend of mine, who unknowingly told me that the Vance Company were about to close the deal for their timber and equipment, that the final cruise and all the papers were about completed. The buyer is a personal friend of his, but requested him to not mention his name.

I let him tell me all this, but never told him that I knew the Vance Company or had any interest in what they were doing.

I will be glad to know if it is anyone of Mr. Mark Reed's associates who are buying the property, as Mr. Reed said it would be one of them. If you would be willing to trust me with this information, I promise to not tell it to anyone, until you give me permission to do so. If the buyer is one to whom Mr. Reed put up the proposition and he become interested, then I would be entitled to the commission on the sale price of the deal, as you requested me not to do anything until I heard from you. I have never mentioned it to anyone.

It was necessary to tell Mr. Wilson at the time I received your letter, that you had informed me that you had given an option to some one, and had requested him not to offer your property to anyone. That is all I told him. I did not know to whom you had given your option.

Hoping that you are getting the deal closed satisfactory, and wishing you the "Compliments of the Season,"

Yours very truly,

RMG:C. [93]

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PLAINTIFF'S EXHIBIT No. 14.

Being Defendant's Exhibit No. 9 Attached to the  
Bordeaux Deposition.—CLERK.

No. 596.

August 27, 1923.

Mason County Logging Co.,  
Bordeaux, Washington.

Dear Sirs:

The Vance Lumber Company herewith gives you an option, to be exercised within sixty days from this date, to purchase for the price of \$3,250,000.00, its entire lumbering and logging properties, including its saw mill, planing mill, shingle mills and all property appurtenant thereto; its office and store buildings, hotel, all of its cottages, pool hall, picture show house, including all of its timber properties, and all its logging railroad and all properties used in the operation thereof and in its logging operations.

All of this property is located at and near Malone, in Grays Harbor County, part of the timber being in Mason County.

Of the said price, \$1,000,000, is to be cash payment, balance on agreed terms.

There are some matters of title and easements which will have to be adjusted, but a list of the lands, including the timber lands and also including the logged-off lands are herewith submitted to you.

Yours truly, [94]

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PLAINTIFF'S EXHIBIT No. 15.

No. 596.

J. A. Vance,	M. A. Vance,	H. B. Dollar,
Pres. & Mgr.	Vice-Pres.	Sec'y.

VANCE LUMBER COMPANY

(Seal)

Manufacturers

LUMBER AND SHINGLES.

Malone, Washington.

Long Distance Phone,  
Elma, Main 822.  
May 7, 1921.

Mr. R. M. Gaunt,  
Lock Box 1426,  
Tacoma, Washington.

Dear Sir:-

Replying to yours of April 30th, in which you say you have a party who would like to purchase a large tract of timber with a saw mill included, will

say that I stopped in Tacoma last night to see you and found that the address I had was only a lock box at the Post Office and did not know where to find you. But would not care to state whether or not we would care to sell until after I had talked with you. If this party is really interested and has money to put up, we might be interested in talking sale.

Yours truly,  
VANCE LUMBER COMPANY,  
By J. A. VANCE.

JAV—H [95]

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PLAINTIFF'S EXHIBIT No. 16.

No. 596.

Lock Box 1426,  
Tacoma, Washington.

April 30th, 1921.

Vance Lumber Company,  
Malone, Washington.

Gentlemen:—

I am looking for a large tract of timber with a mill included, if I can get it. Would you kindly let me know if you will sell your entire holdings in that locality?

If you are willing to sell, name your price that you will take for all, including commission to me for making the sale. This will be kept strictly confidential.

I have a big buyer who wants a large tract of

good timber. If you will let me know as soon as possible, you will greatly oblige me.

Yours very truly,

RMG:C. [96]

R. M. GAUNT.

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DEFENDANT'S EXHIBIT "A-1."

No. 596.

Lock Box 1426,  
Tacoma, Washington.

May 25th, 1923.

Mr. H. B. Dollar,  
Malone, Washington.

Dear Sir:

May I ask if you have sent the plat of timber, price and description of your property to

Mr. Isaac A. Wilson,  
Aberdeen, Washington.

c/o "Hotel Turner."

Or, do you expect him to come to your office again to talk to you?

Awaiting your answer,

Yours very truly,

R. M. GAUNT.

RMG:C. [97]



DEFENDANT'S EXHIBIT "A-2."

No. 596.

Lock Box 1426,  
Tacoma, Washington.

July 12th, 1923.

Mr. H. B. Dollar,  
Malone, Washington.

Dear Sir:

I received your letter and was very much surprised. I immediately called Mr. I. A. Wilson over the phone, and he assured me that he has offered your property to no one else but the Anderson & Middleton Mill Company of Aberdeen, nor has he talked to anyone else about it at all. And he told them to keep it quiet; he says he does not know how the information has gotten out of their office.

We regret this very much. I presume you have received Mr. Wilson's letter advising you that he had submitted the data and plat of your property to the above firm. One member of the company has been back east, and they expect him home by the 15th of this month. Then they will be ready to take up this proposition with all of them upon his arrival.

Mr. Wilson expects to go to Aberdeen early next week, and will report to you as soon as he can do so.

Hoping this will come out all right,

Yours very truly,

RMG:C. [98]

## DEFENDANT'S EXHIBIT "A-4."

Lock Box 1426,  
Tacoma, Washington.

June 16th, 1923.

Mr. H. B. Dollar,  
Malone, Washington.

Dear Sir:—

While I was in Seattle yesterday I called on Mr. Vance at his office. He told me he was not very well. I am sorry to see that he has not yet recovered from his recent illness.

He told me to say to you, that you could go on and get the data together, then he and you would get together on the price and terms of sale.

If you will kindly name the price and include our commission, I will appreciate it very much, as I never like to change figures that the owner gives me.

Then Mr. Wilson can submit it to his people, and take them to see the property.

Mr. Wilson is going to reside in Tacoma in future, and it will be just as well if you send the papers to me. Then I can give them to Mr. Wilson.

If you will give the name of the last cruiser whom you employed, as they always ask for that. Also the percentage of each kind of timber, the number of miles of railway, and the equipment. Also, the plat of timber.

Thanking you in advance for an early reply,

Yours very truly,

R. M. GAUNT.

[Title of Court and Cause.]

ORDER DIRECTING INCLUSION OF EXHIBITS IN TRANSCRIPT ON APPEAL.

On motion of the above-named defendant, and it appearing to the above-entitled court that it is necessary and proper that the documentary exhibits hereinafter referred to be inspected by the Circuit Court of Appeals for the Ninth Circuit upon the appeal herein, the Clerk of the above-entitled court be, and he is hereby, directed to incorporate into the transcript on appeal herein the following exhibits, introduced at the trial of said cause, to wit:

Defendant's Exhibits "A-3," "A-5," and Deposition of Thomas Bordeaux, with exhibits attached thereto marked Defendants' Exhibits 1 to 23, inclusive;

and that said Clerk of said District Court certify said documentary exhibits as originals and forward them to the Clerk of the Appellate Court at the time the certified transcript of record is transmitted.

Done in open court this 8th day of November, 1928.

JEREMIAH NETERER.

[Endorsed]: Filed Nov. 8, 1928. [100]

[Title of Court and Cause.]

ORDER DIRECTING INCLUSION OF COM-  
PLAINANT'S EXHIBIT No. 2 IN TRAN-  
SCRIPT ON APPEAL.

On motion of the above-named plaintiff, and it appearing to the Court that the parties have stipulated that the original exhibits be certified by the Clerk, and it appearing to the Court that it is necessary and proper that the documentary exhibits hereinafter referred to be inspected by the Circuit Court of Appeals for the Ninth Circuit from the appeal herein, the Clerk of the above-entitled court be and he is hereby DIRECTED to incorporate in the transcript on appeal herein the following exhibits introduced at the trial of said cause, to wit, in addition to those heretofore ordered sent up.

Complainant's Exhibit Number 2 (inclusive), and that said Clerk certify said documentary exhibits as originals and forward the same to the Clerk of the Circuit Court of Appeals at the time the certified copy of transcript of the record is transmitted.

Done in open court this 17 day of November, 1928.

BOURQUIN,

District Judge.

O. K.—P. F. F. & E.,

Attys. for Def.

[Endorsed]: Filed Nov. 17, 1928. [101]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING NOVEMBER 20, 1928, TO PREPARE AND CERTIFY RECORD ON APPEAL.

Upon application of Chas. A. Wallace, attorney for the plaintiff in the above-entitled cause, for an order extending the time within which to prepare, have certified and sent up to the Circuit Court of Appeals the record in the above-entitled cause, and it appearing to the Court a proper matter therefor, it is hereby

ORDERED that the time within which to prepare and have certified the record on appeal in the above-entitled cause be and the same hereby is extended to and including the 20th day of November, 1928.

Dated this 22d day of October, 1928.

JEREMIAH NETERER,

Judge.

[Endorsed]: Filed Oct. 22, 1928. [102]

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[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the District Court of the United States:

You will please prepare transcript on the appeal of the above numbered and entitled cause and

include therein the following papers, omitting captions except in original complaint, to wit:

1. Bill of complaint.
2. Answer of defendant to bill of complaint.
3. Minute entry made March 22, 1928, showing order of Court substituting Carrie Gaunt, executrix of Ruby M. Gaunt, deceased, as plaintiff in the above-entitled action.
4. Opinion of the Court.
5. Decree.
6. Complainant's petition for appeal and allowance.
7. Notice of appeal.
8. Complainant's assignment of errors.
9. Complainant's citation.
10. Complainant's praecipe, with proof of service and certificate.
11. Complainant's Exhibits numbering from one to sixteen both inclusive. (Except No. 2—original sent up.)
12. Defendant's Exhibits "A-1, "A-2" and 'A-4.'" [103]
13. Bond on appeal.
14. Statement of the evidence.

B. S. GROSSCUP,  
W. C. MORROW,  
C. A. WALLACE and  
JOHN O. DAVIES,  
Solicitors for Appellant.

[Endorsed]: Filed Sept. 7, 1928. Ed. M. Lakin, Clerk. By S. Cook, Deputy. [104]

[Title of Court and Cause.]

ADDITIONAL PRAECIPE FOR TRAN-  
SCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

Please include in the transcript on appeal in the above matter an order this day entered directing the inclusion of certain documentary exhibits in the transcript on appeal in the above matter.

W. H. ABEL,  
POE, FALKNOR, FALKNOR & EMORY,  
Solicitors for Defendant.

[Endorsed]: Filed Nov. 8, 1928. [105]

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[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO TRANSCRIPT OF RECORD.

United States of America,  
Western District of Washington,—ss.

I, Ed. M. Lakin, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 105, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause, as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said Dis-



trict Court, and that the same constitute the record on appeal herein from the judgment of the said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the appellant herein, for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [106]

Clerk's fees (Act of February 11, 1925) for making record, certificate or return, 293 folios at 15¢.....	\$43.95
Certificate of Clerk to Transcript of Record, with seal .....	.50
Certificate of Clerk to Original Exhibits, with seal .....	.50
	<hr/>
Total .....	\$44.95

I hereby certify that the above cost for preparing and certifying record, amounting to \$44.95, has been paid to me by solicitors for appellant.

I further certify that I hereto attach and herewith transmit the original citation issued in this cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District

Court, at Seattle, in said District, this 21st day of November, 1928.

[Seal]

ED. M. LAKIN,  
Clerk, United States District Court, Western Dis-  
trict of Washington.

By S. E. Leitch,  
Deputy. [107]

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[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America to Vance Lumber Com-  
pany and W. H. Abel and A. J. Falknor, Its At-  
torneys:

You and each of you are hereby notified that in a certain case in equity in the District Court of the United States for the Western District of Washington, Northern Division, wherein Ruby M. Gaunt was complainant and the Vance Lumber Company is defendant, being Equity Cause No. 596, appeal has been allowed the complainant to the Circuit Court of Appeals for the Ninth Circuit. You are hereby cited and admonished to be and appear in said court at San Francisco thirty (30) days after the date of this citation to show cause, if any there be, why the decree appealed from should not be corrected and speedy justice done the parties in that behalf.

WITNESS the Honorable JEREMIAH NET-  
ERER, Judge of the United States District Court

for the Western District of Washington, Northern Division, this 7 day of September, 1928.

JEREMIAH NETERER,  
United States District Judge.

[Seal]

Attest: ED. M. LAKIN,  
United States District Clerk.  
By S. M. H. Cook,  
Deputy. [108]

[Endorsed]: Filed Sep. 7, 1928. [109]

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[Endorsed]: No. 5636. United States Circuit Court of Appeals for the Ninth Circuit. Carrie Gaunt, as Executrix of the Estate of Ruby M. Gaunt, Deceased, Appellant, vs. Vance Lumber Company, a Corporation, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed November 23, 1928.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.